

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

**ARTICLE I
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 Code of Ordinances for the Town of Mills River.

**ARTICLE II
AMENDMENT TO LAND USE**

The Land Use Section of the Code of Ordinances of the Town of Mills River as enacted effective February 26, 2004, and with various amendments, is further amended as to the following articles, chapters, sections and subsections:

CHAPTER 154 AMENDMENTS

Text Amendment TXT-21-07 modifies Chapter 154 of the Mills River Town Code to add one preliminary step in the amendment review process. This is meant to provide immediate feedback to the applicant regarding Council's inclination to further consider such a zoning text amendment initiated by one or more owners of property in the Town limits. See Exhibit A for further details.

Except as specifically amended herein, Chapter 154 of the Town of Mills River Code of Ordinances 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 Code of Ordinances of the Town of Mills River, North Carolina shall take effect and be effective at 12:01 AM on November 19, 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 18th day of November 2021.



Chae T. Davis
Mayor

ATTEST By:



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



TITLE XV: LAND USAGE

CHAPTER 154: ZONING

General Provisions

154.001	Title
154.002	Statutory authority
154.003	Purpose
154.004	Jurisdiction
154.005	Farm exemption
154.006	Watershed buffer requirements
154.007	Word usage and definitions

Establishment of Districts

154.025	Use districts
154.026	Districts boundaries
154.027	Zoning map
154.028	Interpretation of district boundaries

Use Districts

154.045	Use requirements
154.046	Corridor overlay district
154.047	MR-30 residential district
154.048	(Reserved)
154.049	(Reserved)
154.050	(Reserved)
154.051	(Reserved)
154.052	(Reserved)
154.053	(Reserved)
154.054	(Reserved)
154.055	MR-light industrial district
154.056	(Reserved)
154.057	MR-general business district
154.058	MR-neighborhood commercial (Amended)
154.059	(Reserved)
154.060	(Reserved)
154.061	(Reserved)
154.062	(Reserved)
154.063	(Reserved)
154.064	(Reserved)

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

Special Provisions

- 154.080 Single-family residential cluster development
- 154.081 Planned residential development
- 154.082 Multi-family development
- 154.083 (Reserved)
- 154.084 Medical, institutional care development
- 154.085 Structured environment homes
- 154.086 Site standards for certain uses in MR-MU district: tiny home parks, park model parks, and recreational vehicle parks
- 154.087 Site standards for certain uses in MR-MU district and other districts as specifically required
- 154.088 Application requirements for certain uses in MR-MU district and other districts as specifically required
- 154.089 Solar energy generation facility site standards

Communication Towers

- 154.090 Statutory authority; purpose
- 154.091 Jurisdiction
- 154.092 Tower groups
- 154.093 Tower standards by group
- 154.094 Application and process
- 154.095 Discontinued use
- 154.096 Continued compliance required
- 154.097 Variances
- 154.098 Revocation of permit
- 154.099 Appeals
- 154.100 Permit fees and expenses
- 154.101 Penalty

General Regulations

- 154.105 Nonconforming uses
- 154.106 Off-street parking
- 154.107 Off-street loading and unloading space
- 154.108 Required yards and other spaces
- 154.109 One principal building on a lot
- 154.110 Conformity with regulations required

154.111	Relationship of building to lot
154.112	Accessory structures and buildings
154.113	Vehicle graveyard or mobile/manufactured home graveyard as accessory uses
154.114	Recreational vehicles
154.115	Commercial waste container screening requirements
154.116	Traffic impact analysis (TIA) required

Exceptions and Modifications

154.130	Waiver of requirements
154.131	Existing lots
154.132	Front yard setback
154.133	Side yard setback
154.134	Group developments
154.135	Completion of buildings under construction
154.136	Residence additions and accessory buildings
154.137	(Reserved)
154.138	Special uses
154.139	Temporary uses
154.140	Acquisition of land for public purposes

Administration and Enforcement

154.155	Zoning enforcement officer
154.156	Zoning compliance permit
154.157	Duration of permit
154.158	Appeals
154.159	Remedies

Zoning Board of Adjustment and Town Council

154.175	Establishment of Zoning Board of Adjustment
154.176	Proceedings of Zoning Board of Adjustment
154.177	Decisions of Zoning Board of Adjustment
154.178	Appeals of Zoning Board of Adjustment
154.179	Powers and duties of Zoning Board of Adjustment
154.180	Powers and duties of Mills River Town Council
154.181	Appeals to court
154.182	Notice requirements for quasi-judicial public hearings

Amendments

154.195 Authority of Mills River Town Council

154.196 Initiation

154.197 Application

154.198 Planning Board action

154.199 Public hearing

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AMENDMENTS

2

§ 154.195 AUTHORITY OF MILLS RIVER TOWN COUNCIL.

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This chapter, including the Official Zoning Map of the Town of Mills River, may be amended by the Mills River Town Council upon a majority vote on first reading and in accordance with the provisions of this subchapter.

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

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§ 154.196 INITIATION.

8

(A) The text of this chapter and the Official Zoning Map of the Town of Mills River may be amended in order to:

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(1) Correct an error or clarify statements or boundaries;

11

(2) Change the regulations in the text;

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(3) Apply zoning to previously unzoned areas of the ~~T~~town; or

13

(4) Change the zoning of an area (re-zoning).

14

(B) Zoning map amendment. Proposed changes or amendments to ~~this chapter or to~~ the Official Zoning Map of the Town of Mills River may be initiated by the Mills River Town Council, the Planning Board, the Zoning Board of Adjustment, the Town Manager, ~~the Henderson County Watershed Review Board,~~ or one (1) or more owners of property within the area proposed to be changed or affected, as applicable.

20

(C) Zoning text amendment. Proposed changes or amendments to this chapter may be initiated by the Mills River Town Council, the Planning Board, the Zoning Board of Adjustment, or the Town Manager. One (1) or more owners of property within Town limits, including designated owner's agents and legal counsel representing property owners, may petition Town Council for an amendment to this

24

25 chapter, only after holding a pre-application conference with Town Council to
26 determine the acceptability of the proposed text amendment.

27 (1) Pre-application conference required. Prior to submission of an
28 application for a text amendment of this chapter by a Mills River property owner(s),
29 the applicant shall arrange a pre-application conference with Town Council,
30 coordinated by the Zoning Administrator.

31 (2) The applicant shall submit to the Zoning Administrator a
32 description of the proposed text amendment of Town zoning regulations. The
33 description shall identify ordinance sections proposed for amendment and include
34 draft language.

35 (3) The pre-application conference with Town Council is designed
36 to inform the applicant of the Town regulations and policies concerning text
37 amendments and potential compatibility or incompatibility with the Town's adopted
38 comprehensive plan. The pre-application conference is also meant to inform the
39 Town of the applicant's intentions. Town Council has the authority to allow or deny
40 the property owner initiated text amendment to continue through the amendment
41 process. An amendment initiated by one or more property owners in Mills River may
42 proceed with submitting a formal text amendment application only upon a majority
43 vote from Town Council authorizing such during the pre-application conference.

44 (4) Upon positive direction from Town Council to proceed with the
45 amendment process, the applicant may submit to the Zoning Administrator a written
46 application for a text amendment, with the applicable fee as identified in the most
47 recent Town of Mills River fee schedule.

48 (DG) When ~~adopting or rejecting~~ considering any zoning text or map
49 amendment, all proposed changes ~~to this chapter~~ shall ~~first~~ be reviewed by the
50 Planning Board, but only after a pre-application conference with Town Council for

51 text amendments initiated by one (1) or more owners of property in Mills River, prior
52 to consideration by the Town Council.— All changes approved or denied by Town
53 Council shall include a statement describing whether its action is consistent or
54 inconsistent with ~~an~~ the Town's adopted comprehensive plan, per G.S. 160D-605(a).
55 If a zoning map amendment is adopted and the action was deemed inconsistent with the
56 ~~adopted-current land use vision map and comprehensive~~ plan, the zoning amendment
57 shall have the effect of also amending ~~any~~ the future land -use map in the approved
58 comprehensive plan, and no additional request or application for a comprehensive plan
59 amendment shall be required.

60 (E) When adopting or rejecting any petition for a zoning map amendment, a
61 statement analyzing the reasonableness of the proposed rezoning shall be approved by
62 ~~the governing board~~ Town Council, per G.S. 160D-605(b). This statement of
63 reasonableness may consider, among other factors: (i) the size, physical conditions, and
64 other attributes of the area proposed to be rezoned; (ii) the benefits and detriments to
65 the landowners, the neighbors, and the surrounding community; (iii) the relationship
66 between the current actual and permissible development on the tract and adjoining areas
67 and the development that would be permissible under the proposed amendment; (iv)
68 why the action taken is in the public interest; and (v) any changed conditions warranting
69 the amendment. If a zoning map amendment qualifies as a "large-scale rezoning" under
70 G.S. 160D-602(b), the governing board statement on reasonableness may address the
71 overall rezoning.

72 (F) Down-zoning. No zoning text or map amendment that down-zones
73 property shall be initiated nor is it enforceable without the written consent of all
74 property owners whose property is the subject of the down-zoning amendment,
75 unless the down-zoning amendment is initiated by the Town of Mills River. For the
76 purposes of this section, "down-zoning" means a zoning ordinance that affects an area
77 of land in one of the following ways: (i) by decreasing the development density of the

78 [land to be less dense than was allowed under its previous usage; or \(ii\) by reducing](#)
79 [the permitted uses of the land that are specified in the Town zoning code to fewer](#)
80 [uses than were allowed under its previous usage, per G.S. §160D-601\(d\).](#)

81
82 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-
83 2005)

84 § 154.197 APPLICATION.

85 (A) Text amendments. In order for a person authorized by § 154.~~197~~[196](#)
86 to initiate a change to the text of this chapter, [a pre-application conference must be](#)
87 [held with Town Council, as described in §154.196\(C\), coordinated by the Zoning](#)
88 [Administrator. If the petitioner receives approval from Town Council during the pre-](#)
89 [application conference to proceed with the text amendment process,](#) an application
90 accompanied by the application fee shall be submitted to the Mills River Town Hall at
91 least [thirty \(30\)](#) days prior to the date of the Planning Board meeting at which the
92 application is to be considered [for a recommendation](#). The application shall contain
93 the name(s) and address(es) of the applicant(s), a copy of the proposed text change
94 and a statement from the applicant(s) which explains the purpose for the
95 amendment.

96 (B) [Zoning m](#)Map amendments. In order for a ~~property owner person~~
97 [authorized by §154.196](#) to initiate a change to the Official Zoning Map, an application
98 accompanied by the application fee shall be submitted to the Mills River Town Hall at
99 least [thirty \(30\)](#) days prior to the date of the Planning Board meeting at which the
100 application is to be considered [for a recommendation](#). The application shall contain
101 the name(s) and address(es) of the owner(s) of the property in question, the location
102 of the property [proposed to be rezoned](#), a list of the name(s) and address(es) of the
103 owner(s) of property abutting the property in question as shown on the [Henderson](#)

104 ~~C~~county tax listing, ~~and~~ a description ~~and/or statement~~ of the present and proposed
105 zoning ~~regulation or~~ district, and a statement describing the consistency of the
106 request with the adopted Town comprehensive plan and land use vision map. All
107 applications requesting a change in the Official Zoning Map shall include a description
108 of the property in question sufficient to unequivocally describe and identify the
109 property. The description may take the form of a property survey, a legal description
110 or a legible copy of a Henderson County cadastral or composite Tax Map clearly
111 annotated with district lines which follow political boundaries, geographical features
112 or property lines.

113 (C) Application Modification. Application forms may be modified by the
114 Town Council, ~~or~~ Planning Board, Town Manager, or Zoning Administrator, as
115 necessary.

116 (D) Consideration. The Planning Board and the Mills River Town Council
117 will not consider an application for ~~an~~ text or map amendment denied within the
118 preceding twelve (12) months by the Town Council. This twelve (12) month waiting
119 period shall be calculated beginning from the date of Town Council's decision to deny.
120 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005)

121 **§ 154.198 PLANNING BOARD ACTION.**

122 Before taking any action on a proposed amendment to this chapter or the
123 Official Zoning Map, the Mills River Town Council shall consider the Planning Board's
124 recommendation on each proposed amendment. The Planning Board shall have thirty
125 ~~45-(30)~~ days after the first consideration of an application for ~~re-zoning~~ a zoning
126 regulation or zoning map amendment at a regular meeting to submit its
127 recommendations to the Mills River Town Council, per G.S. §160D-604(b). Failure of
128 the Planning Board to submit recommendations within the ~~45-~~30-day period shall
129 constitute a favorable recommendation, except that, if by agreement of the Planning

130 Board, Town Council, and the applicant ~~45~~thirty ~~-(30)~~ days is insufficient due to the
 131 size of the area, the complexity of the request or similar circumstances, the Planning
 132 Board shall have ~~90~~sixty (60) days to submit the recommendation. If no written
 133 recommendation or report is received from the Planning Board within the initial 30-
 134 day period, Town Council may act on the amendment without the Planning Board
 135 report. Town Council is not bound by the recommendations, if any, of the Planning
 136 Board, per G.S. §160D-604(b). Time limitations, ~~however,~~ shall not ~~be applied~~apply
 137 to applications for areas not previously zoned, to text amendments or to zoning map
 138 amendments initiated by the Planning Board, the Board of Adjustment, the Town
 139 Manager, or the Town Council, ~~or the Henderson County Watershed Review Board.~~
 140 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005)

141 § 154.199 LEGISLATIVE HEARING.

142 Before enacting any amendment to this chapter or the Official Zoning Map, the
 143 Mills River Town Council shall hold a legislative hearing. Public notification of the
 144 hearing shall comply with the provisions of G.S. §§ 160D-601~~i~~, as amended.

145 (A) Newspaper notice. In accordance with G.S. § 160D-601, a notice of
 146 the legislative hearing shall be published in a newspaper of general circulation in the
 147 Town of Mills River once a week for two (2) successive calendar weeks, the first
 148 publication of which shall not appear less than ten (10) days nor more than twenty-
 149 five (25) days prior to the date fixed for the hearing. In computing the public notice
 150 period, the day of publication is not to be included but the day of the hearing shall be
 151 included. The notice shall include the time, place and date of the hearing and include
 152 a description of the property or the nature of the change or amendment to the
 153 ordinance and/or Official Zoning ~~map~~Map.

154 (B) Mailed notice. In accordance with G.S. §160D-602, whenever there is
 155 a proposed ~~map~~ amendment to the Official Zoning Map, the owner of that parcel of land

156 as shown on the [Henderson County](#) tax listing and the owners of all parcels of land
157 abutting that parcel of land as well as all properties separated from the subject
158 property by street, reserved right-of-way, railroad, or other transportation corridor
159 as shown on the [Henderson County](#) tax listing shall be mailed a notice of a legislative
160 hearing on the proposed amendment by first class mail at the last addresses listed for
161 the owners on the [Henderson County](#) tax abstracts. This notice must be deposited in
162 the mail at least [ten \(10\)](#) but not more than [twenty-five \(25\)](#) days prior to the date of
163 the legislative hearing. The person(s) mailing the notices shall certify to the Town
164 Council that fact, and the certificate shall be deemed conclusive in the absence of
165 fraud. However, with specific approval of the Mills River Town Council at the time the
166 Town Council sets a legislative hearing on a particular application, the Town Council
167 may elect to use the expanded notice procedure, [per G.S. §160D-602\(b\)](#), which
168 follows in lieu of or in addition to the first class [mailed](#) notice required by this division
169 if:

170 (1) The proposed amendment would initially zone property added
171 to the territorial coverage of the Official Zoning Map; or

172 (2) The proposed amendment directly affects more than [fifty \(50\)](#)
173 properties owned by a total of at least [fifty \(50\)](#) different property owners.

174 (C) Expanded published notice procedure. If the Town Council elects to
175 utilize the expanded notice procedure, the town shall publish once a week for ~~4~~
176 ~~successive~~[four \(4\) successive](#) calendar weeks in a newspaper having general
177 circulation in the area an advertisement of the legislative hearing that shows the
178 boundaries of the area affected by the proposed Zoning Map amendment and explains
179 the nature of the proposed change. The final two (2) advertisements shall comply
180 with and be deemed to satisfy the provisions of G.S. § 160D-602. The advertisement
181 shall not be less than [one half \(½\)](#) of a newspaper page in size. The advertisement

182 shall only be effective for property owners who reside in the area of general
183 circulation of the newspaper which publishes the notice. Property owners who reside
184 outside of the newspaper circulation area, according to the address listed on the most
185 recent property tax listing for the affected property, shall be notified by first class mail
186 pursuant to this section. The person(s) mailing the notices shall certify to the Town
187 Council that fact, and the certificates shall be deemed conclusive in the absence of
188 fraud. In addition to the published notice, the Town of Mills River shall post one (1)
189 or more prominent signs on or immediately adjacent to the subject area reasonably
190 calculated to give public notice of the proposed re-zoning.

191 (D) Posted notice. For any proposed amendment to the Official Zoning
192 Map, the Town of Mills River shall post a sign in a prominent location on or near the
193 subject property which indicates that a zoning change has been proposed for the
194 subject property. In the event that more than one (1) parcel is involved in a particular
195 Zoning Map amendment, at least one (1) sign shall be posted in a central location;
196 however, the Town of Mills River may post multiple signs. The sign(s) shall be posted
197 ~~at least~~ during the period between twenty-five (25) days prior and ten (10) days prior
198 to the legislative hearing date.

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