

**AN ORDINANCE AMENDING TITLE XV LAND USAGE OF THE MILLS RIVER CODE OF ORDINANCES, CHAPTER  
154 (ZONING) IN ACCORDANCE WITH TXT-23-01**

**WHEREAS**, at the FY 23-24 Budget Visioning Session on March 10, 2023, Council requested information regarding conditional zoning and directed staff to bring the text amendment process to include conditional zoning in the Mills River zoning ordinance.

**WHEREAS**, the Planning Board considered the text amendment at the April 4, 2023 meeting, and tabled the item for additional consideration and the incorporation of changes until the May 2, 2023 meeting.

**WHEREAS**, the Planning Board voted unanimously at the May 2, 2023 public meeting to recommend approval of text amendment TXT-23-01 due to consistencies with the Town's Making Mills River 2040 Comprehensive Plan, specifically Objective 1.4, Policy 1.4.5, Objective 1.6, Policies 1.6.1 & 1.6.2, Objective 4.3, Policy 4.3.4 and Objective 6.2, Policy 6.2.2

**WHEREAS**, the Mills River Town Council held a public hearing on June 8, 2023 to consider said request, and gave the public an opportunity to be heard.

**WHEREAS**, the Town Council considered the text amendment and directed staff to make density and minimum lot size requirements unnegotiable in a conditional zoning district, and asked the Planning Board to discuss and recommend a minimum parcel size to qualify for the conditional zoning process.

**WHEREAS**, the Planning Board set a minimum parcel size of two acres and voted unanimously at the August 1, 2023 public meeting to recommend approval of text amendment TXT-23-01, with the modifications requested by Town Council, due to consistencies with the Town's Making Mills River 2040 Comprehensive Plan, specifically Objective 1.4, Policy 1.4.5, Objective 1.6, Policies 1.6.1 & 1.6.2, Objective 4.3, Policy 4.3.4 and Objective 6.2, Policy 6.2.2

**WHEREAS**, the Mills River Town Council held a public hearing on September 14, 2023 to consider said request, and gave the public an opportunity to be heard.

**WHEREAS**, the Town Council concurs with the Planning Board's consistency findings, approved a statement of plan consistency, and briefly explained why Council considers the action taken to be reasonable and in the public interest.

**WHEREAS**, 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.

**WHEREAS**, the Administration 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:

The proposed text includes the general purpose and intent of conditional zoning districts as well as standards required for application of a conditional rezoning. The minimum requirements to be eligible to apply for a conditional rezoning. The text is intended to outline what standards may or may not be altered with the

creation of a conditional zoning district (including a site masterplan), application requirements, and conditional zoning district conditions, and limitations on modifications of approval.

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. Specific details are attached.

**WHEREAS**, 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.

**NOW THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MILLS RIVER:**

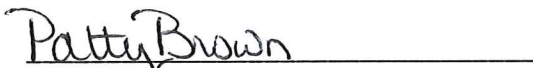
**THAT**, text amendment TXT-23-01 is comprised of the following: amendments to Chapter 154, see attached and shall take effect and be effective at 12:01 AM on September 15, 2023, and shall be in full force and effect at all times thereafter until duly amended.

**ADOPTED AND PASSED** by the Town Council of the Town of Mills River, North Carolina, this the 14th day of September, 2023.



Shanon Gonce  
Mayor

ATTEST By:



Patty Brown, CMC, NCCMC  
Deputy Town Clerk



# **TITLE XV: LAND USAGE**

## CHAPTER 154: ZONING – *EXCERPTS*

### Establishment of Districts

|         |                                       |
|---------|---------------------------------------|
| 154.025 | Use districts                         |
| 154.026 | District 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                          |
| 154.067 | <a href="#">MR-conditional zoning district</a> |

## Amendments

|           |                                       |
|-----------|---------------------------------------|
| 154.195   | Authority of Mills River Town Council |
| 154.196   | Initiation                            |
| 154.197   | Application                           |
| 1 154.198 | Planning Board action                 |
| 2 154.199 | Public hearing                        |

## ESTABLISHMENT OF DISTRICTS

### § 154.025 USE DISTRICTS.

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

- (A) MR-30 Low-Density Residential District.
- (B) MR-LI Light Industrial.
- (D) MR-GB General Business.
- (E) MR-NC Neighborhood Commercial.
- (F) MR-MU Mixed Use.
- ~~(G)~~ [MR-R-CD Residential Conditional Zoning District.](#)
- ~~(H)~~ [MR-C-CD Commercial Conditional Zoning District.](#)
- ~~(I)~~ [MR-I-CD Industrial Conditional Zoning District.](#)
- ~~(J)~~ [MR-M-CD Mixed Use Conditional Zoning District](#)

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

19 **§ 154.067 MR-Conditional Zoning District.**

20 It is recognized that certain types of zoning districts would be inappropriate at particular  
21 locations in the absence of special conditions. Some land uses are of such a nature or scale  
22 that they have significant impacts on both the immediately surrounding area and on the entire  
23 community which cannot be predetermined and controlled by general district standards. There  
24 are also circumstances in which a general district designation allowing such a use by-right would  
25 not be appropriate for a particular property, even though the use itself could, if properly  
26 planned, be appropriate for the property consistent with the objectives of this Zoning Ordinance  
27 and the Making Mills River 2040 Comprehensive Plan.

28 Establishment of a Conditional Zoning District shall only be considered upon the request  
29 of all the owners and/or their representatives of the property to be included. A Conditional  
30 Zoning may not be initiated by the Town Council, the Planning Board, the Board of Adjustment,  
31 the Town Manager, the Zoning Administrator, or other Town staff.

32 As authorized under G.S. 160D-703, the following conditional districts are established  
33 which require the submission of an application and a master plan as a prerequisite to any  
34 development.

35 (A) Residential Conditional Zoning District (MR-R-CD)

36 (B) Commercial Conditional Zoning District (MR-C-CD)

37 (C) Industrial Conditional Zoning District (MR-I-CD)

38 (D) Mixed Use Conditional Zoning District (MR-M-CD)

39 Each district is subject to applicable standards and conditions imposed by the Town  
40 Council in the ordinance creating the district. If the ordinance creating a conditional zoning  
41 district fails to provide specific standards, any development in the district shall comply with the  
42 applicable standards for the corresponding base district contained in this Ordinance. These  
43 conditional districts are not intended to relieve hardships that should be resolved by means of a  
44 variance.

45 The conditional zoning district classification allows projects of innovative design and  
46 layout that would not otherwise be permitted under this ordinance because of the strict  
47 application of conventional zoning district standards or other general development standards.  
48 Conditional zoning encourages innovative land planning and design concepts by:

49 (A) Reducing or eliminating the inflexibility that sometimes results from strict  
50 application of zoning and development standards that were designed primarily for  
51 individual lots;

52 (B) Allowing greater freedom in selecting the means to provide access, light, open  
53 space, and design amenities;

54 (C) Allowing greater freedom in providing a mix of land uses in the same development,  
55 including a mix of housing types, ~~lot sizes, densities,~~ and non-residential uses in a  
56 conditional zoning district;

57 (D) Promoting quality urban design and environmentally sensitive development by  
58 allowing development to take advantage of special site characteristics, locations,  
59 and land uses; and

60 ~~—Encouraging quality urban design and environmentally sensitive development by—~~  
61 ~~allowing increases in base densities when such increases can be justified by superior~~  
62 ~~design or the provision of additional amenities such as public and/or private open—~~  
63 ~~space.~~

64 In return for greater flexibility in site design requirements, conditional zoning districts  
65 are expected to deliver exceptional quality community designs that preserve critical  
66 environmental resources, provide high quality open space amenities, incorporate creative  
67 design in the layout of buildings, open space and circulation; assure compatibility with  
68 surrounding land uses and neighborhood character; and provide greater efficiency in the layout  
69 and provision of roads, utilities, and other infrastructure.

70 (1) In order to apply for a rezoning to a conditional zoning district, proposed  
71 development projects and subject property must meet both of —of the  
72 following minimum requirements:

- 73 a. Subject property must have *Making Mills River Comprehensive Plan,*  
74 Future Land Use Map designation of Community Center, Industrial and  
75 Employment, or Community Crossroads districts.  
76 ~~Lot Size~~ Subject property total contiguous acreage: ~~Three~~ ~~Two~~ (32) Acres  
77 ~~Commercial Building Area: 50,000 square feet (gross floor area)~~  
78 ~~Industrial Building Area: 150,000 square feet (gross floor area)~~

79 (2) Uses:

- 80 a. Each conditional zoning district ordinance shall specify allowable uses  
81 and associated approval processes as one of the following:  
82 i. Permitted by Right (P). A use which is permitted by right must  
83 comply with the development standards mutually agreed to for  
84 the conditional district.  
85 ii. Permitted with Standards (PS). Same as above except that the  
86 use must comply with one or more additional standards not  
87 required of other permitted uses in the district.  
88 iii. Special Use Permit (SUP). Requires issuance of a Major or Minor  
89 Special Use Permit from Town Council or the Board of  
90 Adjustment, respectively.

91 (3) Development Standards:

- 92 a. Certain development standards may not be altered by means of a  
93 conditional zoning district, these include: water supply watershed  
94 regulations, stormwater regulations, water supply permitting,  
95 wastewater permitting, NCDOT driveway permitting, and any other  
96 state or federal requirements, such as sedimentation and erosion  
97 control permitting, and stream and wetland disturbance permitting.  
98 i. Residential density in a conditional district must adhere to the  
99 Town requirement of a maximum of one (1) dwelling unit per

- 100 30,000 SF for detached single-family developments, and four  
101 dwelling units per acre for multifamily developments, tiny home  
102 parks, park model parks, and recreational vehicle parks.  
103 ii. Residential minimum lot size in a conditional district must  
104 adhere to the Town requirement of no less than 30,000 SF for  
105 detached single-family developments, and 20,000 SF for single-  
106 family residential cluster developments and planned residential  
107 developments. Lot size requirements are waived for multifamily  
108 developments.  
109 b. Unless specifically stated in the approving ordinance all developments  
110 must comply with existing standards for parking, landscaping, corridor  
111 overlay district architectural requirements, road construction standards,  
112 yards, and setbacks, as identified in the most closely related  
113 conventional zoning district.  
114 c. Conditional zoning districts may allow for modifications to any or all of  
115 the following:  
116 i. Uses  
117 —Lot size  
118 —Density  
119 ii. Building height  
120 iii. Building size  
121 iv. Building architectural design  
122 v. Parking  
123 vi. Landscaping  
124 vii. Setbacks  
125 viii. Open space  
126 ix. Signage  
127 ix. Number of Principle Uses or Buildings

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## AMENDMENTS

### 129 § 154.195 AUTHORITY OF MILLS RIVER TOWN COUNCIL.

130 This chapter, ~~including~~ the Official Zoning Map of the Town of Mills River, and the  
131 Town's adopted comprehensive plan, including the future land use vision map, may be amended  
132 by the Mills River Town Council upon a majority vote on first reading and in accordance with the  
133 provisions of this subchapter.

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



135 **§ 154.196 INITIATION.**

136 (A) The text of this chapter, ~~and~~ the Official Zoning Map of the Town of Mills  
137 River, [the adopted comprehensive plan, and the future land use vision map](#) may be amended in  
138 order to:

- 139 (1) Correct an error or clarify statements or boundaries;  
140 (2) Change the regulations in the text;  
141 (3) Apply zoning to previously unzoned areas of the town; or  
142 (4) Change the zoning [or future land use designation](#) of an area ~~(re-zoning)~~.

143 (B) Zoning map amendment. [Except as provided in §154.067, p](#)Proposed changes or  
144 amendments to the Official Zoning Map of the Town of Mills River may be initiated by the Mills  
145 River Town Council, the Planning Board, the Zoning Board of Adjustment, the Town Manager, or  
146 one (1) or more owners of property within the area proposed to be changed or affected, as  
147 applicable.

148 (C) Zoning text amendment, [comprehensive plan amendment, or future land use](#)  
149 [vision map amendment](#). Proposed changes or amendments to this chapter, [to the](#)  
150 [comprehensive plan, or to the future land use vision map](#) may be initiated by the Mills River  
151 Town Council, the Planning Board, ~~the Zoning Board of Adjustment,~~ or the Town Manager. One  
152 (1) or more owners of property within Town limits may petition Town Council for an  
153 amendment to this chapter, [to the comprehensive plan, or to the future land use vision map](#),  
154 only after holding a pre-application conference with Town Council to determine the  
155 acceptability of the proposed ~~text~~ amendment.

156 (1) Pre-application conference required. Prior to submission of an  
157 application for ~~a text amendment of this chapter~~ [an amendment to the zoning ordinance, the](#)  
158 [comprehensive plan, or the future land use vision map](#) by a Mills River property owner(s), the  
159 applicant shall arrange a pre-application conference with Town Council, coordinated by the  
160 Zoning Administrator.

161 (2) The applicant shall submit to the Zoning Administrator a description of  
162 the proposed ~~text amendment of Town zoning regulations~~ [amendment](#). The description shall  
163 identify ~~ordinance~~ sections proposed for amendment and include draft language [or proposed](#)  
164 [changes](#).

165 (3) The pre-application conference with Town Council is designed to inform  
166 the applicant of the Town regulations and policies concerning ~~text~~ amendments and potential  
167 compatibility or incompatibility with the Town's adopted comprehensive plan. The pre-  
168 application conference is also meant to inform the Town of the applicant's intentions. Town  
169 Council has the authority to allow or deny the property owner initiated ~~text~~ amendment to  
170 continue through the amendment process. An amendment initiated by one or more property  
171 owners in Mills River may proceed with submitting a formal ~~text~~ amendment application only  
172 upon a majority vote from Town Council authorizing such during the pre-application conference.

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

177 (D) When considering any zoning text or map amendment, or comprehensive plan  
178 or future land use vision map amendment, all proposed changes shall be reviewed by the  
179 Planning Board, but only after a pre-application conference with Town Council for ~~text~~  
180 amendments initiated by one (1) or more owners of property in Mills River. All changes  
181 approved or denied by Town Council shall include a statement describing whether its action is  
182 consistent or inconsistent with the Town's adopted comprehensive plan, per G.S. 160D-605(a).  
183 If a zoning map amendment is adopted and the action was deemed inconsistent with the  
184 ~~current-future~~ land use vision map and comprehensive plan, the zoning amendment shall  
185 have the effect of also amending the future land use map in the approved comprehensive  
186 plan, and no additional request or application for a comprehensive plan amendment shall  
187 be required.

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

199 (F) Down-zoning. No zoning text or map amendment that down-zones property  
200 shall be initiated nor is it enforceable without the written consent of all property owners whose  
201 property is the subject of the down-zoning amendment, unless the down-zoning amendment is  
202 initiated by the Town of Mills River. For the purposes of this section, "down-zoning" means a  
203 zoning ordinance that affects an area of land in one of the following ways: (i) by decreasing the  
204 development density of the land to be less dense than was allowed under its previous usage; or  
205 (ii) by reducing the permitted uses of the land that are specified in the Town zoning code to  
206 fewer uses than were allowed under its previous usage, per G.S. §160D-601(d).

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

## 208 § 154.197 APPLICATION.

209 (A) Text amendment, comprehensive plan amendment, or future land use vision  
210 map amendments. In order for a person authorized by § 154.196 to initiate an amendment—  
211 ~~change to the text of this chapter~~, a pre-application conference must be held with Town Council,

212 as described in §154.196(C), coordinated by the Zoning Administrator. If the petitioner receives  
213 approval from Town Council during the pre-application conference to proceed with the ~~text~~  
214 amendment process, an application accompanied by the application fee shall be submitted to  
215 the Mills River Town Hall at least thirty (30) days prior to the date of the Planning Board meeting  
216 at which the application is to be considered for a recommendation. The application shall contain  
217 the name(s) and address(es) of the applicant(s), a copy of the proposed ~~text~~ change and a  
218 statement from the applicant(s) which explains the purpose for the amendment.

219 (B) Zoning map amendments.

220 i. Conventional Rezoning

221 In order for a person authorized by §154.196 to initiate a  
222 change to the Official Zoning Map, from one base district to  
223 another, an application accompanied by the application fee  
224 shall be submitted to the Mills River Town Hall at least thirty  
225 (30) days prior to the date of the Planning Board meeting at  
226 which the application is to be considered for a  
227 recommendation. The application shall contain the name(s)  
228 and address(es) of the owner(s) of the property in question,  
229 the location of the property proposed to be rezoned, a list  
230 of the name(s) and address(es) of the owner(s) of property  
231 abutting the property in question as shown on the  
232 Henderson County tax listing, a description of the present  
233 and proposed zoning district, and a statement describing  
234 the consistency of the request with the adopted Town  
235 comprehensive plan and land use vision map. All  
236 applications requesting a change in the Official Zoning Map  
237 shall include a description of the property in question  
238 sufficient to unequivocally describe and identify the  
239 property. The description may take the form of a property  
240 survey, a legal description or a legible copy of a Henderson  
241 County cadastral or composite Tax Map clearly annotated  
242 with district lines which follow political boundaries,  
243 geographical features or property lines.

244 ii. Conditional Rezoning

245 In order for a property owner to initiate a change to the  
246 Official Zoning Map to create a conditional zoning district,  
247 an application accompanied by the application fee, and a  
248 preliminary master plan or final master plan shall be  
249 submitted to the Mills River Town Hall at least sixty (60)  
250 days prior to the date of the Planning Board meeting at  
251 which the application is to be considered for a  
252 recommendation.

253 (a) Required Supplemental Materials for  
254 Preliminary or Final Master Plans:

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1. Site Masterplan (Preliminary or Final)
2. Name of Development
- ~~3.~~ 3. Timetable including all phases
4. List of proposed development conditions
5. Location of flood hazard areas, buffer zones, watershed districts, jurisdictional wetlands or similar.

(b) Requirements for Preliminary Masterplans:

1. The location of proposed buildings, parking and loading areas, streets, alleys, easements, lots, parks or other open spaces, property lines and building setback lines with street dimensions, and tentative lot dimensions.
2. The traffic and circulation system demonstrating a safe and adequate on-site transportation system that addresses vehicular, bicycle, and pedestrian circulation.
- ~~2-3.~~ 3. The proposed limits of construction for all proposed development activity, including all required protected areas and open space.
4. A statement from the appropriate utility providers regarding the availability of adequate water and sewer capacity for the proposed development.
5. Landscape plan
6. Architectural plans
7. Traffic impact analysis (if required)
8. Stormwater management plan
9. Watershed compliance plan
10. Conceptual utilities plan including water, wastewater, and other utilities.

(c) Requirements for Final Masterplan

1. Items 1-10 in §154.197(B)(ii)(ab)
2. The boundary, as determined by survey, of the area to be subdivided with all bearings and distances shown and the location within the area, or contiguous to it, of any existing streets, railroad lines, water courses, easements, bridges, floodplains, or other significant features of the tract.

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3. Scale in feet denoted both graphically and numerically with north arrow and declination.
4. A sketch vicinity map at a scale no smaller than one inch equals 1,200 feet showing the relationship between the proposed subdivision and surrounding area.
5. Existing topography and finish grading with contours drawn at two foot intervals. This requirement may be waived for developments ~~smaller than one acre or~~ where insufficient topographic changes warrant such information.
6. The proposed names of the development and streets, the owner's name and address, signature of the owner or owner's duly authorized agent, the surveyor's name, the names of existing and proposed adjoining subdivisions or property owners, the names of the city, county, and state in which the development is located, the date of preparation, and the zoning classification of the tract to be developed and of adjoining properties.
7. Proposed lot lines, lot and block numbers, and exact dimensions.
8. The future ownership (dedication or reservation for public use to a governmental body; for owners to duly constituted home owners' association, for tenant's remaining in subdivider's ownership of recreation and open space lands).
9. The plans for utility layouts, including sanitary sewers, storm sewers, and water lines, illustrating connections to existing systems, and approval from the utility provider for the system including new connections.
10. The location and size of all utility lines, easements, and rights-of-way.
11. The location of proposed buildings, parking and loading areas, streets, alleys, lots, parks or other open spaces, reservations (e.g.

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school sites), property lines and building setback lines with street dimensions, tentative lot dimensions, and the location of any building restriction areas (e.g. flood hazard areas, watershed protection districts, and/or jurisdictional wetlands. Building setbacks are measured from the property line to the closest point of the structure, including gutters and roof overhangs. Buildings shown for the purpose of measuring setbacks must reflect these elements when applicable.

12. Site calculations shall include total acreage of tract, acreage in parks and other non-residential uses, total number and acreage of parcels, the total number of housing units, area of all mixed-use and non-residential buildings, gross project density per acre, linear feet of streets, and the accurate locations and descriptions of all monuments, markers, and control points.

13. The location and dimensions of all off-street parking and loading spaces, and walkways indicating the type of surfacing, size, angle of stalls, width of aisles, and a specific parking plan showing parking provided for the proposed uses and structures with parking ratios.

14. Typical cross sections of proposed streets showing rights-of-way, pavement widths, grades, and design engineering data for all corners and curves.

15. The location of any existing or proposed demolition landfills in the site. Such sites shall not be used for building.

16. A copy of the full soil erosion and sedimentation permit application and any US Army Corps of Engineers permit applications, including forms, plans, and calculations to be submitted to the North Carolina Department of Environmental Quality-Erosion and Sediment Control Office. A copy of the approval letter shall be

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provided prior to zoning permit approval and construction.

3.17. Final proposed elevations of all ~~non-~~ ~~single-family~~ non-single-family and duplex buildings proposed for construction as part of the site plan approval. Subsequent buildings within the development may be handled as separate site plans. Such elevations shall include all facades.

(d) Conditions: Per G.S. 160D-703(b), specific development conditions may be proposed by the applicant and/or the Town of Mills River, but only those conditions approved by the Town of Mills River and consented to by the applicant in writing may be incorporated into the conditional zoning district ordinance. Conditions and site-specific standards imposed in a conditional district shall be limited to those that address conformance of the development and use of the site to Town of Mills River ordinances, existing development standards, the Making Mills River 2040 Comprehensive Plan or any amendments thereto, or the impacts reasonably expected to be generated by the proposed development or use of the subject property.

(e) Modification of Final Approval: Minor modifications of conditional district site development plans approved by the Mills River Town Council, may be considered and approved by the Town Manager or Zoning Administrator, as long as the requested modification does not involve a change in permitted uses, change in density of the development, change in roadway layout or transportation access points, or significant changes in building locations, or other major site characteristics, and does not increase the impacts generated by the development on traffic, stormwater runoff, or similar impacts beyond what was projected for the original development approval.

Minor modifications may be granted for the reduction or adjustment of up to ten percent (10%) of the required parking, landscaping, building set-backs, or change in building dimensions or gross floor area. Any minor modification must meet all other Town ordinance requirements. Minor modifications may only be granted for just cause and are only intended to provide relief based upon a unique physical attribute of the property or some other factor unique to the property which was not known at the time of approval and which has subsequently rendered the property difficult or impossible to develop or use due to the conditions imposed.

427 The permit holder shall bear the burden of proof to secure the  
428 modification. Any other modification of the conditions and  
429 standards in the conditional district shall be considered a major  
430 modification and shall follow the same process for the original  
431 approval of the conditional district. If multiple parcels of land  
432 are subject to a conditional zoning, the owners of individual  
433 parcels must consent in writing to the requested modification.

434 (C) Application Modification. Application forms may be modified by the Town  
435 Council, Planning Board, Town Manager, or Zoning Administrator, as necessary.

436 (D) Conditional District Review Process & Approvals. Preliminary masterplans may  
437 be considered and approved prior to the final masterplan approval. This allows the  
438 applicant an opportunity to present a request for conditional rezoning without fully  
439 engineered construction details and plans. Preliminary and final masterplan approvals  
440 are valid for two (2) years, and the approval shall be annotated on the plan itself and  
441 certified by the Zoning Administrator, or designee. The Mills River Town Council may,  
442 for just cause, grant a single extension of the masterplan approval for a maximum of  
443 one (1) additional year.

444 If the applicant includes a preliminary master plan in the initial conditional zoning  
445 application which receives Council approval, this preliminary master plan is valid for two  
446 (2) years. The applicant is then required to submit a fully engineered final master plan to  
447 the Zoning Administrator within two (2) years of initial approval, which will be reviewed  
448 by the Town Planning Board for conformance with the preliminary plan approval. An  
449 applicant shall only receive a zoning permit to begin project construction after securing  
450 Planning Board approval for the final master plan. If the final master plan deviates from  
451 the preliminary master plan approval, the applicant shall secure a minor modification  
452 approval, or the change shall be considered a major modification, which requires a  
453 conditional zoning re-submittal, recommendation from the Planning Board, and review  
454 of Town Council in a public hearing, following the same process applicable for the  
455 original approval. Final master plans may also be submitted as part of the initial  
456 conditional zoning application, and if approved by Town Council, no additional Planning  
457 Board or Council review for zoning permit issuance is needed.

458 (E) Consideration. The Planning Board and the Mills River Town Council will not  
459 consider an application for a ~~text or map n~~ amendment denied within the preceding twelve (12)  
460 months by the Town Council.

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

## 462 **§ 154.198 PLANNING BOARD ACTION.**

463 Before taking any action on a proposed amendment to this chapter, ~~to or~~ the Official  
464 Zoning Map, to the comprehensive plan, or to the future land use vision map, the Mills River  
465 Town Council shall consider the Planning Board's recommendation on each proposed



466 amendment. The Planning Board shall have thirty (30) days after the first consideration of an  
467 application for a ~~zoning regulation or zoning map~~ amendment at a regular meeting to submit  
468 its recommendations to the Mills River Town Council, per G.S. §160D-604(b). Failure of the  
469 Planning Board to submit recommendations within the 30-day period shall constitute a  
470 favorable recommendation, except that, if by agreement of the Planning Board, Town Council,  
471 and the applicant thirty (30) days is insufficient due to the size of the area, the complexity of the  
472 request or similar circumstances, the Planning Board shall have sixty (60) days to submit the  
473 recommendation. If no written recommendation or report is received from the Planning Board  
474 within the initial 30-day period, Town Council may act on the amendment without the Planning  
475 Board report. Town Council is not bound by the recommendations, if any, of the Planning Board,  
476 per G.S. §160D-604(b). Time limitations shall not apply to applications for areas not previously  
477 zoned, or to text amendments, or to zoning map amendments, comprehensive plan  
478 amendments, or future land use vision map amendments initiated by the Planning Board, ~~the~~  
479 ~~Board of Adjustment~~, the Town Manager, or the Town Council  
480 (Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005)

481 **§ 154.199 LEGISLATIVE HEARING.**

482 Before enacting any amendment to this chapter, ~~or to~~ the Official Zoning Map, to the  
483 comprehensive plan, or to the future land use vision map, the Mills River Town Council shall  
484 hold a legislative hearing. Public notification of the hearing shall comply with the provisions of  
485 G.S. § 160D-601, as amended.

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

494 (B) Mailed notice. In accordance with G.S. §160D-602, whenever there is a  
495 proposed amendment to the Official Zoning Map or the future land use vision map, the owner  
496 of that parcel of land as shown on the Henderson County tax listing and the owners of all parcels  
497 of land abutting that parcel of land as well as all properties separated from the subject property  
498 by street, reserved right-of-way, railroad, or other transportation corridor as shown on the  
499 Henderson County tax listing shall be mailed by first-class mail a notice of a legislative hearing  
500 on the proposed amendment by first class mail at the last address listed for the owners on the  
501 Henderson County tax abstracts. This notice must be deposited in the mail at least ten (10) but  
502 not more than twenty-five (25) days prior to the date of the legislative hearing. The person(s)  
503 mailing the notices shall certify to the Town Council that fact, and the certificate shall be  
504 deemed conclusive in the absence of fraud. However, with specific approval of the Mills River  
505 Town Council at the time the Town Council sets a legislative hearing on a particular application,

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506 the Town Council may elect to use the expanded notice procedure, per G.S. §160D-602(b),  
507 which follows in lieu of or in addition to the first class mailed notice required by this division if:

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

510 (2) The proposed amendment directly affects more than fifty (50)  
511 properties owned by a total of at least fifty (50) different property owners.

512 (C) Expanded published notice procedure. If the Town Council elects to utilize  
513 the expanded notice procedure, the town shall publish once a week for four (4) successive  
514 calendar weeks in a newspaper having general circulation in the area an advertisement of the  
515 legislative hearing that shows the boundaries of the area affected by the proposed Zoning Map  
516 amendment and explains the nature of the proposed change. The final two (2) advertisements  
517 shall comply with and be deemed to satisfy the provisions of G.S. § 160D-602. The  
518 advertisement shall not be less than one half (½) of a newspaper page in size. The advertisement  
519 shall only be effective for property owners who reside in the area of general circulation of the  
520 newspaper which publishes the notice. Property owners who reside outside of the newspaper  
521 circulation area, according to the address listed on the most recent property tax listing for the  
522 affected property, shall be notified by first class mail pursuant to this section. The person(s)  
523 mailing the notices shall certify to the Town Council that fact, and the certificates shall be  
524 deemed conclusive in the absence of fraud. In addition to the published notice, the Town of  
525 Mills River shall post one (1) or more prominent signs on or immediately adjacent to the subject  
526 area reasonably calculated to give public notice of the proposed re-zoning.

527 (D) Posted notice. For any proposed amendment to the Official Zoning Map or to  
528 the future land use vision map, the Town of Mills River shall post a sign in a prominent location  
529 on or near the subject property which indicates that a zoning map change or future land use  
530 map change has been proposed for the subject property. In the event that more than one (1)  
531 parcel is involved in a particular ~~Zoning Map~~ amendment, at least one (1) sign shall be posted in  
532 a central location; however, the Town of Mills River may post multiple signs. The sign(s) shall be  
533 posted during the period between twenty-five (25) days prior and ten (10) days prior to the  
534 legislative hearing date.

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

536