

AN ORDINANCE AMENDING TITLE XV LAND USAGE OF THE MILLS RIVER CODE OF ORDINANCES, CHAPTER 154 (ZONING) IN ACCORDANCE WITH TXT-23-02

WHEREAS, the Town Manager and Planning Director initiated a text amendment to update the Town's Special Use permit procedures, including mailed notice requirements.

WHEREAS, at the September 14, 2023 Council meeting, Council requested staff prepare a text amendment requiring all proposed multifamily developments apply via the conditional zoning process and not the major special use permit process. Staff incorporated Council's requested changes into the special use permit text amendment.

WHEREAS, the Planning Board voted unanimously at the January 16, 2024 public meeting to recommend approval of text amendment TXT-23-02 due to consistencies with the Town's Making Mills River 2040 Comprehensive Plan, specifically Objective 1.1, Policy 1.1.1; Objective 1.4, Policy 1.4.1 and 1.4.5; and Objective 1.5.

WHEREAS, the Mills River Town Council held a public hearing on February 22, 2024 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 updates to the Town's special use permit procedures, including special use mailed notice requirements, and removing preliminary reviews of special use permits by non-quasi-judicial advisory boards. The proposed text also requires all proposed multifamily developments apply via the conditional zoning process and not the major special use permit process.

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-23-02 is comprised of the following: amendments to Chapter 154, see attached and shall take effect and be effective at 12:01 AM on February 23, 2024, 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 February, 2024.



Shanon Gonce
Mayor

ATTEST By:



Patty Brown, CMC, NCCMC
Deputy Town Clerk



TITLE XV: LAND USAGE

CHAPTER 154: ZONING

USE DISTRICTS

§ 154.047 MR-30 RESIDENTIAL DISTRICT.

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

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

- (1) Single-family dwellings.
- (2) Churches, provided that:
 - (a) The structures are placed not less than 50 feet from any property line.
 - (b) They are located with access to a street , as shall be determined by the Zoning Administrator .
 - (c) There is a planted buffer strip along the side and rear property lines, except where the lines run parallel and contiguous with streets , streambeds, lakes and railroad tracks.
- (3) Church cemeteries on property contiguous to or adjacent to the principal church assembly building , provided that all plots shall be set back at least 20 feet from any property line.
- (4) Church bulletin boards not exceeding 12 square feet in area.
- (5) Signs not more than 4 feet square in area advertising the sale or rental of property on which they are located.
- (6) Customary accessory buildings , including private garages, noncommercial greenhouses and workshops.
- (7) Family care homes .
- (8) Family Child Care Homes .
- (9) Child Care unregulated by the State of North Carolina.
- (10) Incidental Home Occupations .
- (11) Solar panels shall be allowed as a secondary use as defined in this chapter. They shall not be allowed in front yards except by Minor Special Use Permit as approved by the Board of Adjustment. Application for a special use permit shall include justification for why the panels must be placed in the front yard and show that there is no practical alternative. Solar panels shall be subject to the setback requirements for structures in each

district. Stand-alone solar panels shall be limited to 10 feet in height. Solar panels attached to buildings shall extend more than 5 feet above the building. Stand-alone solar panels that are secondary uses to residential uses shall not be required to buffer. Stand-alone solar panels that are secondary uses to commercial uses shall be required to plant a buffer strip along side and rear property lines as defined in the zoning definitions. Residential panels shall not produce more than 150% of the power required for the site.

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

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

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

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

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

(b) A dwelling unit, as defined in § 154.007, is a single unit providing complete, independent (emphasis added), living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.

Example: A duplex is planned for construction in a district requiring a 30,000 square foot minimum lot size and 30,000 square feet for each dwelling unit. Since a duplex consists of two dwelling units the minimum lot area applies to each unit. Therefore, a duplex consisting of two dwelling units requires a total of 60,000 square feet of lot size.

~~(3) Multi-family development, subject to the conditions listed under § 154.082 of this chapter.~~

(34) Medical, institutional care development, subject to conditions listed under § 154.084 of this chapter.

(45) Group 1 communications towers and tower activities as defined in and subject to the requirements in §§ 154.090 through 154.101 of Mills River Zoning Ordinance.

(56) Group 2 communications towers and tower activities as defined in and subject to the requirements in §§ 154.090 through 154.101 of Mills River Zoning Ordinance.

(67) Group 6 communications towers and tower activities as defined in and subject to the requirements in §§ 154.090 through 154.101 of Mills River Zoning Ordinance.

(78) Transformer and public stations, provided that:

(a) Transformer stations:

1. The structures are placed not less than 75 feet from any property line.
2. The structures are enclosed by a woven-wire fence at least 8 feet high.
3. No vehicle or equipment is stored on the premises.
4. There is an evergreen planted buffer strip along the side and rear property lines of residential zoned property .

(b) Public utility stations:

1. The structures are located on sufficient land to meet all setback requirements of this chapter.
2. The stations are completely enclosed, either by a building or a wire fence at least 8 feet high.
3. There is an evergreen planted buffer strip along the side and rear property lines of residential zoned property .

(89) Structured Home Environments, subject to the conditions listed under § 154.085.

(C) Uses allowed under a Minor Special Use Permit . The following uses shall be permitted, subject to a finding by the Board of Adjustment that both the conditions in the definition of SPECIAL USE in § 154.007(B) and those conditions listed below will be met:

(1) Parks, camps , tennis and racquet clubs and golf courses . (Miniature golf courses and practice driving tees and illuminated golf courses operated for commercial purposes are not allowed.)

(2) Libraries.

(3) Bed-and-breakfast inns .

(4) Civic and cultural buildings , including auditoriums, theaters for the performing arts, museums, art galleries, symphony and concert halls and historical societies, provided that:

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

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

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

(d) The facility is operated not for profit and satisfactory proof of the tax-exempt status of the organization is exhibited to the Zoning Administrator .

(e) One parking space is provided for each 2 seats in auditoriums, theaters and symphony and concert halls.

(f) One parking space for each 100 feet of gross floor space directed to patron use shall be provided for museums, art galleries and historical societies.

(5) Child Care Centers , public schools having multiple curricula and private schools having curricula approximately the same as ordinarily given in public schools provided that:

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

(b) Play areas shall be placed not less than 20 feet from any property line.

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

(d) The property has at least 45 feet of frontage on a publicly owned and maintained road.

(6) Adult Day Care Centers and Adult Day Health Centers provided that:

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

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

(c) The property has at least 45 feet of frontage on a publicly owned and maintained road.

(7) Adult Day Care Homes and Adult Day Health Homes provided that:

(a) There is a limit of 10 clients per day.

(D) Dimensional requirements. Within the MR-30 Residential District, as shown on the Zoning Map of the Town of Mills River, the following dimensional requirements shall be met:

(1) Minimum lot area: 30,000 square feet¹.

(2) Minimum lot area per dwelling: 30,000 square feet¹.

(3) Maximum building size: N/A.

(4) Maximum building height : 50 feet.

(5) Minimum front yard setback from major street : 75 feet².

(6) Minimum front yard setback from all other streets : 60 feet

(7) Minimum rear yard setback: 30 feet.

(8) Minimum side yard setback for every principal building : 30 feet.

NOTE:

1 This minimum lot size shall not apply to existing residential lots nor lots which have been platted and recorded as residential lots with the Henderson County Register of Deeds as of 31 July 2004. In cases where the Watershed Protection Ordinance requires a larger lot size, the Henderson County Water Supply Watershed Ordinance shall prevail.

2 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 subject property .

(E) Buffer/Screening Requirements.

(1) Whenever any MR30 - Residential District non-residential rear and/or side property line abuts upon a residential use with no intervening street or highway or natural buffer, any buildings or parking area used for non-residential purposes shall be screened with a buffer strip along the property line(s) as defined in § 154.007(B).

(2) In all other cases, uses in the MR-30 Residential District shall comply with applicable landscaping and screening requirements in the Town of Mills River Landscape Ordinance.

(Ord. passed 3-1-2004; Am. Ord. 00013, passed 7-29-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00038, passed 11-21-2006; Am. Ord. 00055, passed 4-23-2009; Am. Ord. 00066, passed 4-28-2011; Am. Ord. 00080, passed 5-23-2013; Am. Ord. 2021-06, passed 4-22-2021)

TITLE XV: LAND USAGE

CHAPTER 154: ZONING

SPECIAL PROVISIONS

§ 154.082 MULTI-FAMILY DEVELOPMENT.

A multi-family development may be located in the MR-30, MR-MU, and MR-NC district as a ~~special use under a Major Special Use Permit~~ conditional zoning district development, subject to ~~a the finding final decision making authority of~~ by the Mills River Town Council, on the advice and recommendation of the Town of Mills River Planning Board, per the procedures identified in §154.067, §154.196, and §154.197 ~~that certain conditions be met.~~ The purpose of this section is to provide reasonable design standards for multi-family developments for greater design flexibility and accommodate housing for current and future residents of the town. The Town Council shall exercise ultimate discretion as to whether the total development plan does comply with the spirit and intent of this section.

(A) Land development standards. The following land development standards shall apply for all multi-family developments. Single-family dwelling detached homes and duplexes on individual lots are exempt from this section.

(1) Ownership control. The land in a multi-family development shall be under single ownership or management by the applicant before final approval and/or construction, or proper assurances (legal title or execution of a binding sales agreement) shall be provided that the development can be successfully completed by the applicant.

(2) Density requirements. The maximum density for multi-family developments (dwelling units per acre) shall be 4 units per acre.

(3) Streets, street right-of-way, utility station sites, lakes, ponds and other impervious structures, may not be included when determining the total number of units available within a multi-family development.

(4) Frontage requirements. Multi-family developments shall have the main entrance on a paved, public, state -maintained road or highway with a minimum parcel frontage of 200 feet and a minimum parcel depth of 200 feet.

(5) Minimum size. The minimum area for a multi-family development shall be ~~1½~~2 contiguous acres.

(6) Minimum requirements.

(a) The normal 30,000 square feet lot size, setbacks and frontage requirements are hereby waived for multi-family developments.

(b) Height limitations. No building or structure shall exceed 35 feet in height as measured from the highest ground elevation of the building or structure to the highest point of the roof or facade whichever is greater.

(c) Required distance between buildings . The minimum distance between buildings shall be as follows:

1. All buildings located or situated end to end (shortest sides) and are less than 20 feet in height shall have a minimum separation of 20 feet between buildings . When one (1) or both buildings exceed 20 feet in height, the building separation shall be increased an additional one (1) foot for every foot of increased height to a maximum of 30 feet separation .

2. All buildings located or situated side to side or end to end (longest sides) and are less than 20 feet in height shall have a minimum separation of 30 feet between buildings . When one (1) or more adjacent buildings exceed 20 feet in height, the building separation shall be increased an additional one (1) foot for every foot of increased height to a maximum of 40 feet separation .

(d) Each building shall be no more than 150 feet in length.

(e) Landscaping. The proposed development shall be designed as a single architectural scheme with appropriate common landscaping. Landscaping shall meet the requirements of §§ 154.230 through 154.237.

(f) Publicly-owned and maintained water and sewer shall be required for a multi-family development.

(g) A minimum of 15% of the parcel must be common open space. Of the required open space, a minimum of 20% and a maximum of 50% is required to be active use open space.

(7) Multi-family developments considered in accordance with an overall plan shall include provisions for:

(a) Parking. Parking spaces shall be provided within the development at a ratio of 1½ spaces for each unit. No parking space shall be closer than 10 feet to any residential building wall.

(b) Area regulations. No building shall be erected at a distance of less than 60 feet from the center line of any minor street on which the development abuts, nor less than the required side or rear lot line setback of the adjacent district; however, in no instance shall the minimum side and rear lot line setback be less than 10 feet.

(c) Every dwelling unit shall have direct access to an interior road and there shall be provision for adequate vehicular circulation to all development properties in order to insure acceptable levels of access for emergency vehicles.

(d) The location of structures , shown on the development plan, shall be so arranged as not to be detrimental to existing or other proposed structures or to the development of the neighborhood .

(e) All utilities shall conform to the following requirements:

1. ~~Water systems.~~ Water system. Adequate water volume and pressure for domestic use and fire protection shall be available to the proposed project. The water system shall be designed by a registered engineer and approved by the appropriate state and local agencies.

2. Sewer system. The project shall have an approved waste [water](#) disposal system designed by a registered engineer, if applicable, and approved by the appropriate state and local agencies.

3. Stormwater drainage. Stormwater runoff shall be collected, channeled or piped to discharge into natural drainageways in a manner which will not cause erosion or adverse effects to adjacent property . The system shall be designed by a registered engineer or other ~~competent~~[licensed](#) professional. The design shall be for a 25-year storm and shall incorporate requirements of the erosion and sedimentation control plan, both temporary and permanent facilities.

(f) Street design and access. All streets within the multi-family development shall conform to the North Carolina Department of Transportation standards for subdivision streets . The multi-family development shall have at least one (1) primary entrance/exit onto a public roadway and one (1) emergency entrance/exit. A turning or deceleration lane shall be provided.

(g) Exterior lighting . A multi-family development shall provide an exterior lighting system for adequate resident safety along access drives, service areas, pedestrian walks and recreation areas. The lighting system shall be designed in keeping with the scale and architectural harmony of the project. Fixtures shall be [cutoff, full cutoff, and/or shielded fixtures, and](#) oriented, ~~to the degree possible,~~ to reduce glare within the project and onto adjacent properties . [A lighting plan and fixture specifications shall be submitted for Town review.](#)

(h) Building identification. All structures shall be identified in a manner that will provide immediate recognition when viewed from the street or access drive.

(8) Privacy. Each development shall provide reasonable visual and acoustical privacy for all dwelling units . Fences, insulation, walls, barriers, and landscaping shall be used as appropriate for the protection and aesthetic enhancement of property and the privacy of its occupants , screening of objectionable views or uses, and reduction of noise. Multi-family buildings shall be located in a way as to dissipate any adverse impact on adjoining low-rise buildings and shall not invade the privacy of the occupants of such low-rise buildings .

(a) Perimeter requirements. A 10-foot evergreen planted buffer strip shall be provided where ever the development adjoins the boundary or property line of a residential use meeting the requirements of § 154.007.

(b) If topographical or other barriers within 200 feet of the perimeter of the development do not provide reasonable privacy for existing uses adjacent to the development, the Town Council may impose any of the following requirements:

1. Structures located on the perimeter of the development must be set back from property lines and rights-of-way of abutting streets in accordance with the provision of this chapter controlling the district within which the property is situated.

2. Structures other than single-family ~~detached~~ detached units located on the perimeter of the development may require screening in a manner which is approved by the Town Council .

3. The location of the structures on the perimeter of the development, as shown on the development plan, shall be so arranged as not to be detrimental to existing structures or to the adjacent neighborhood .

(9) Plans and accompanying documentation to ensure that the water and sewer systems proposed for the multi-family development have been designed by a professional engineer, and have been approved by the appropriate local and state agencies, shall be submitted as a part of the application.

(10) Preliminary plans shall be include parking provisions for all proposed uses within the multi-family development in accordance with § 154.105.

(11) Any pedestrian and bicycle path circulation system and its related walkways shall be insulated as reasonably as possible in order to provide separation of pedestrian and motorized vehicular traffic.

(12) Layout of parking areas, service areas, entrance, exits, yards , courts and landscaping and control of signs, lighting , noise or other potentially adverse influences shall be such as to protect the residential character within the development and the desirable character in any adjoining property .

(B) Timing. ~~If no development has occurred pursuant to the issuance of a special use permit one (1) year after the date of the special use permit for the development or upon the expiration of one 90-day extension of time for starting development granted by the Town Council, the special use permit shall become null and void and the procedures for application and review as outlined in this section shall be required for any development on the subject property.~~ Preliminary masterplans may be considered and approved for a conditional zoning district, prior to the final masterplan approval. This allows the applicant an opportunity to request a conditional zoning district for a multifamily development without fully engineered construction details and plans. Preliminary and final masterplan approvals are valid for two (2) years. The Town Council may, for just cause, grant a single extension of the masterplan approval for a maximum of one (1) additional year. Conditional zoning review processes should adhere to §154.197(D).

(C) Staged development (phasing). After general construction commences, the Zoning Administrator shall review at least once every 6 months all permits issued and compare them to the overall development phasing program. If he or she determines that the rate of

construction of residential units substantially differs from the approved phasing program, he or she shall so notify the developer, and the Town Council may issue such appropriate orders to the developer as it sees fit and, upon continued violation of this division, may order the Zoning Administrator to refuse any further permits until the project is in general accordance with the approved phasing program.

(D) Conveyance of open space, recreational areas and communally owned facilities.

(1) Common open space, recreational areas and communally owned facilities shall be guaranteed by a restrictive covenant describing the areas and facilities and their maintenance and improvement, running with the land for the benefit of residents of the planned residential development or adjoining property owners or both.

(2) The applicant must submit to the Town Council the legal documents which will produce the aforesaid guaranties and, in particular, will provide for restricting the use of common areas and facilities for the designated purposes.

(E) Maintenance. Multi-family developments shall be approved subject to the submission of an instrument or instruments setting forth a plan for permanent care and maintenance of permanent open spaces, recreational areas, easements, rights-of-way and communally owned facilities which would be legally enforceable. The developer shall create a homeowners' association and submit bylaws and rules and regulations governing the association. The developer shall be required to include in every deed he or she makes that membership be mandatory for each home buyer.

(1) The provisions shall include, but not be limited to, the following :

(a) The homeowners' association must be set up before the homes are sold.

(b) The open space restrictions must be permanent not just for a period of years .

(c) The association must be responsible for liability insurance, local taxes and the maintenance of recreational and other designated facilities.

(d) Homeowners must pay their pro rata share of the cost; the assessment levied by the association can become a lien on the property .

(e) The association must be able to adjust the assessment to meet changed needs.

(2) No such instrument shall be acceptable until approved by the Town Attorney as to legal form and effect and the Town Council as to suitability for the proposed uses.

(F) Procedures for application and review. An applicant desiring to develop a multi-family development shall adhere to the following procedures:

(1) Preapplication conference. Prior to submission of an application for a ~~special use permit~~ conditional zoning district to the Town Council , the applicant shall arrange a preapplication conference with the ~~Planning Board and its staff.~~ Zoning Administrator.

(a) The applicant shall submit to the ~~Planning Board~~ Zoning Administrator a sketch development plan and a brief description of the proposed development strategy. The

sketch plan and development strategy shall show and describe the layout of the development, depicting proposed areas and types of residential development, open spaces and recreation areas and streets.

(b) The preapplication conference is designed to inform the developer of the local government's regulations and policies concerning development alternatives and to inform the local government of the developer's intentions, enough to be able to give him or her some informal, nonbinding feedback on the acceptability of his or her ideas. The greater the level of common understanding between the developer and the local government that can be achieved at the preapplication conference stage, the smoother the remaining steps of the review process will be.

(2) ~~Special-use permit~~Conditional zoning. Upon completion of the preapplication conference with ~~the Planning Board~~Town staff, the applicant shall submit to the Town Council a written application for a ~~Major Special-Use Permit~~conditional zoning district in accordance with § 154.197(B)(2)~~80~~.

(3) ~~Development~~Preliminary or final masterplan. After the preapplication conference and ~~upon with the~~ submission of a written application for a ~~special-use permit~~conditional zoning, the applicant shall also submit a ~~preliminary or final master development~~ plan ~~to the Town Council. A second copy of the development plan shall be submitted to the Planning Board for review and recommendations.~~ The Town Council shall not ~~issue approve~~ a ~~special-use permit~~conditional zoning district until it has received recommendations from the Planning Board. If no action is taken by the Planning Board within ~~45-30~~ days of the meeting at which the Planning Board first considers the ~~development~~master plan, it shall be deemed to have recommended approval of the ~~development~~master plan, and the Town Council may proceed to act upon the application, except that if by mutual agreement between the Planning Board, the applicant, and Town Council 30 days is insufficient to review the request due to its size and/or complexity, the Planning Board shall have 60 days to complete the review and submit a recommendation to Council.

(4) The Planning Board shall review the ~~development~~master plan for conformance with the land development standards of this section, the sketch plan and development strategy presented in the preapplication conference and the requirements of the ~~v~~ plan which shall include the following information and supporting documentation:

(a) Written documents.

1. A legal description of the total site proposed for development, including a statement of present and proposed ownership.
2. The zoning district or districts in which the project is located.
3. A general statement of objectives to be achieved by the ~~planned residential~~multi-family development through the particular approach proposed by the applicant.
4. A development schedule indicating approximate beginning and completion dates of the development, including any proposed stages.

5. A statement of the applicant's intentions with regard to the future selling and/or leasing of all or portions of the ~~planned residential~~ multi-family development.

6. Quantitative data for the following : proposed total number of residential dwelling units , parcel sizes, gross residential densities and total amount of open space.

7. Plan for maintenance of common areas, recreation areas, open spaces, utilities, streets and/or vehicular circulation facilities.

(b) Site plan and supporting maps. A map or maps drawn to an appropriate scale, with the date of preparation and north point, shall include the following information:

1. Existing site conditions, including contours at 5-foot vertical intervals, watercourses, identified flood hazard areas and any unique natural or man-made features.

2. Boundary lines of the proposed development, proposed lot lines and plot designs.

3. The locations, dimensions and arrangements of all open spaces and areas devoted to planting, lawns, trees or similar purposes, with a description including the height and density of all trees or planting to be used for screening .

4. Proposed location and use of all existing structures .

5. The location, use, plan and dimension of each building or structure to be constructed.

6. Location and size of all areas to be conveyed, dedicated or reserved as common open space, parks, recreational areas, school sites and similar public and semipublic uses.

7. The existing and proposed street and/or vehicular circulation facilities, including off-street parking areas, service areas, loading areas and major points of access to public rights-of-way, notations of proposed ownership of street and/or vehicular circulation facilities (public or private) and sidewalks ; documentation from Henderson County Emergency Medical Services and the Mills River Fire Chief of the adequacy of the development's facilities for emergency medical and fire services.

8. Approximate location of proposed utility systems, including documentation approving the proposed water and sewer systems from the appropriate local and state agencies. Water and sewer documentation must reflect the current development name and densities, be issued within the past 6 months and state that the public entity intends to accept both flow and maintenance. Documentation of an approved sedimentation and erosion control plan shall also be submitted.

9. Location and/or notation of existing and proposed easements and rights-of-way.

10. Information on adjacent land areas, including land use, zoning classifications, public facilities and any unique natural features.

(c) Additional information. Any additional information required by the Mills River Town Council in order to evaluate the impact of the proposed multi-family development. The Town Council may waive a particular requirement if, in its opinion, the inclusion is not

essential to a proper decision on the project. The advice and recommendation of the Planning Board is one of an advisory capacity, and the Town Council has final authority on granting or denying a ~~special-use permit~~conditional zoning district .

~~(5) The Town Council shall submit a copy of its decision on a multi-family development to the Planning Board.~~

(56) Amendments to the ~~development~~masterplan. Minor changes in the location, siting or character of buildings and structures may be authorized by the Town Manager or Zoning Administrator , if required by engineering or other circumstances not foreseen at the time the ~~final development program~~masterplan was approved; provided, however, that no change authorized by the Zoning Administrator under this section may increase the size of any building or structure by more than 10%, nor change the location of any building or structure by more than 10 feet in any direction, nor make any changes beyond the minimum or maximum requirements set forth in this chapter. All other changes in the ~~planned residential~~multi-family development, including changes listed below, shall not be made without resubmission of the ~~planned residential~~multi-family development according to the procedures, in this section and §154.197. Any minor modification of a masterplan shall follow the procedures of §154.197(B)(2)(e).

- (a) A change in the use or character of the development.
- (b) An increase in overall density .
- (c) An increase in intensity of use.
- (d) Alteration of the traffic circulation system.
- (e) A reduction in approved open space.
- (f) A reduction of off-street parking and loading space.

(Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. 10-13-2005; Am. Ord. 00038, passed 11-21-2006; Am. Ord. 00041, passed 4-26-2007; Am. Ord. 00083, passed 10-10-2013; Am. Ord. 2021-06, passed 4-22-2021)

TITLE XV: LAND USAGE

CHAPTER 154: ZONING

EXCEPTIONS AND MODIFICATIONS

§ 154.137 MINOR SPECIAL USE PERMITS.

(A) When a Minor Special Use- Permit is required by the terms of this chapter, application for such a permit shall accompany the application for a zoning compliance permit. The ~~Zoning Administrator application shall be transmitted~~shall review the application for completeness, and schedule an evidentiary hearing to consider the application at the next regular meeting of the Zoning Board of Adjustment, immediately to the Zoning Board of Adjustment, which may refer it to the Planning Board for review and recommendations prior to a public hearing. If there are scheduling difficulties, the Chair of the Zoning Board of Adjustment may call a special meeting to consider the minor special use permit in an evidentiary hearing.

(B) A notice of the evidentiary hearing shall be given once a week for 2 successive calendar weeks in a newspaper published in the county-, as provided in § ~~154.179(C)(1)(b).~~182

(C) The applicant shall identify all adjacent property owners-, whom the Zoning Administrator will notify by ~~registered-USPS certified mail with no return receipt service,~~ of the minor special use application. The Zoning Administrator shall post the property with a hearing notice, ~~per §154.182-detailing the special use sought and the hearing time.~~ The Mills River Town Council may establish and maintain a fee schedule to recover costs of legal notices, posting the property and notifying the adjacent property owners . These fees shall be paid by the applicant before a special use permit is ~~issued~~considered.

(D) If the Zoning Board of Adjustment shall find after the evidentiary hearing the use for which the special use- permit is sought will not adversely affect the health and safety of persons residing or working in the neighborhood of the proposed use, and will not be detrimental to the public welfare or injurious to property or public improvements in the neighborhood , it shall issue a special use permit . All uses requiring a special use- permit must meet the general site standards listed in § 154.138(D). In granting such a permit , the Zoning Board of Adjustment shall designate the conditions in connection therewith as will, in its opinion, assure that the use will conform to the requirements of this chapter.

(E) If at any time after a special use- permit has been issued for any use the Zoning Board of Adjustment finds that the conditions imposed and agreements have not been or are not being fulfilled by the holder of a special use permit, the permit shall be terminated immediately and the operation of the use discontinued.

(F) If a special use- permit is terminated for any reason, it may be reinstated upon application as in the case of a new matter.

(Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005; Am. Ord. 2021-06, passed 4-22-2021)

§ 154.138 MAJOR SPECIAL USE PERMITS.

(A) When a Major Special Use Permit is required by the terms of this chapter, application for such a permit shall accompany the application for a zoning compliance permit. ~~The application shall be transmitted immediately to the Mills River Town Council, which shall refer it to the Planning Board for review and recommendations prior to an evidentiary hearing. The Zoning Administrator shall review the application for completeness and request Town Council schedule an evidentiary hearing to consider the application.~~

(B) A notice of the evidentiary hearing shall be given once a week for 2 successive calendar weeks in a newspaper published in the county as provided in § 154.18~~20(A)(1)(b)~~.

(C) The applicant shall identify all adjacent property owners, whom the Zoning Administrator will notify by ~~registered-USPS certified~~ mail ~~with no return receipt service~~, of the major special use application. The Zoning Administrator shall post the property with a hearing notice, ~~per §154.182-detailing the special use sought and the hearing time~~. The Mills River Town Council may establish and maintain a fee schedule to recover costs of legal notices, posting the property and notifying the adjacent property owners. These fees shall be paid by the applicant before a special use permit is ~~issued~~considered.

(D) General site standards. All uses requiring a special use permit must meet the general site standards listed below. In evaluating whether the general site standards have been met, the Mills River Town Council may consider the type and size of the principal use, size of the property and other relevant factors. The applicant will not bear the burden of proving that all of the general site standards as listed below have been met. The applicant will, however, be required to produce evidence sufficient to rebut any evidence presented that the general site standards would not be met or that a condition is necessary.

(1) The following general site standards shall apply to all uses requiring a special use permit:

(a) Establishments requiring a special use permit shall not be located or developed in such a manner as to adversely affect the health or safety of the persons residing or working in the neighborhood of the proposed use and will not be detrimental to the public welfare or injurious to property or public improvements in the neighborhood.

(b) Establishments requiring a special use permit shall be located or developed in such a manner as to minimize the effects of noise, glare, dust, solar access and odor on those persons residing or working in the neighborhood of the proposed use and the property and public improvements in the neighborhood.

(c) Establishments requiring a special use permit shall not be located or developed in such a manner as to seriously worsen the traffic congestion so as to endanger the public safety.

(d) Establishments requiring a special use permit shall be located or developed in such a manner as to comply with all applicable federal, state and local laws, rules and regulations.

(e) Establishments requiring a special use permit shall be located and developed in such a manner as to be consistent with any approved [Town Transportation Plans](#), Official Thoroughfare Plans, [and Town Bicycle and Pedestrian Plans](#).

(f) Establishments requiring a special use permit shall be located and developed in such a manner as to minimize the environmental impacts on the neighborhood including the following : groundwater, surface water, wetlands, endangered and threatened species, archeological sites, historical preservation sites and unique natural areas .

(2) In the event that the Mills River Town Council determines that a proposed use is contrary to one (1) or more of the general site standards, then the Town Council may impose a condition on the issuance of the special use permit when the condition will avoid a violation of the general site standards. The condition imposed may be an increase in any minimum specific site standards stated for the regulated use. The imposition of a condition may only be based on evidence presented at the hearing that the general site standards would not be met without the imposition of the condition. The Town Council must make specific findings of fact based upon the evidence presented prior to the imposition of the condition.

(E) If at any time after a special use permit has been issued for any special use, the Mills River Town Council finds that the conditions imposed and agreements made have not been or are not being fulfilled by the holder of a special use permit, the permit shall be terminated immediately and the operation of the use discontinued.

(F) If a special use permit is terminated for any reason, it may be reinstated upon application as in the case of a new matter.

(Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00052, passed 6-26-2008; Am. Ord. 2021-06, passed 4-22-2021)

TITLE XV: LAND USAGE

CHAPTER 154: ZONING

ZONING BOARD OF ADJUSTMENT AND TOWN COUNCIL

§ 154.179 POWERS AND DUTIES OF ZONING BOARD OF ADJUSTMENT.

The Zoning Board of Adjustment shall have the following powers and duties:

(A) Administrative review. To hear and decide appeals where it is alleged there is error in an order, requirement, decision, determination or interpretation made by the Zoning Administrator in the enforcement of this chapter pursuant to any of the following :

(1) Any person who has standing under G.S. § 160D-1402(c) or the ~~city-Town~~ may appeal a decision to the board of adjustment. An appeal is taken by filing a notice of appeal with the ~~city-Town~~ clerk. The notice of appeal shall state the grounds for the appeal.

(2) The official who made the decision shall give written notice to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner . The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.

(3) The owner or other party shall have ~~(30)~~ thirty days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal.

(4) It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "Zoning Decision" or "Subdivision Decision" in letters at least 6 inches high and identifying the means to contact an official for information about the decision is prominently posted on the property that is the subject of the decision, provided the sign remains on the property for at least ~~(10)~~ ten days. Posting of signs is not the only form of constructive notice. Any such posting shall be the responsibility of the landowner or applicant. Verification of the posting shall be provided to the official who made the decision. Absent an ordinance provision to the contrary, posting of signs shall not be required.

(5) The official who made the decision shall transmit to the board all documents and exhibits constituting the record upon which the action appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner .

(6) An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from unless the official who made the decision certifies to the board of adjustment after notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or because the violation is

transitory in nature, a stay would seriously interfere with enforcement of the ordinance. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the board of adjustment shall meet to hear the appeal within ~~(15)~~ fifteen days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the ordinance shall not stay the further review of an application for permits or permissions to use such property ; in these situations the appellant may request and the board may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.

(7) Subject to the provisions of subdivision (6) of this subsection, the board of adjustment shall hear and decide the appeal within a reasonable time.

(8) The official who made the decision shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the city would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing. The board of adjustment may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have all the powers of the official who made the decision.

(9) When hearing an appeal pursuant to G.S. Chapter 160D, Article 4 or any other appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in G.S. § 160D-1402(c).

(10) The parties to an appeal that has been made under this subsection may agree to mediation or other forms of alternative dispute resolution. The ordinance may set standards and procedures to facilitate and manage such voluntary alternative dispute resolution.

(B) Variances. To authorize, upon appeal, variations or modifications of any regulation or provision of this chapter relating to the dimensional requirements, construction or alteration of buildings or other provisions, so that the spirit of this chapter is observed, public safety and welfare secured and substantial justice done; however, the Zoning Board of Adjustment shall not permit a use of land, building or structure which is not permitted by right or by a special use permit in the district involved.

(1) The Zoning Board of Adjustment may issue a variance only on the basis of affirmative findings of fact for all of the following criteria:

(a) There are practical difficulties or unnecessary hardships in carrying out the strict letter of this chapter, as demonstrated by:

(b) The hardship results from conditions that are peculiar to the property , such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

(c) The hardship did not result from actions taken by the applicant or the property owner . The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

(d) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that is secured, and substantial justice is achieved. No change in permitted uses may be authorized by variance.

(2) Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance.

(C) Minor Special Uses; conditions governing application. To grant, in particular cases and subject to appropriate conditions and safeguards, permits for Minor Special Uses as authorized by this chapter and set forth as conditional-special uses under the various use districts.

(1) The Zoning Board of Adjustment shall not grant a special use permit unless and until:

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

(b) A public evidentiary hearing is held pursuant to § 154.182.

(2) If the Board of Adjustment finds that in the particular case in question, the use for which the conditional-special use permit is sought will not adversely affect the health or safety of the persons residing or working in the neighborhood of the proposed use and will not be detrimental to the public welfare or injurious to property or public improvements in the neighborhood , a permit may be granted. In granting such a permit , the Zoning Board of Adjustment may designate the conditions in connection therewith as will, in its opinion, assure that the proposed use will conform to the requirements and spirit of this chapter.

(3) If at any time after a conditional-special use permit has been issued the Board of Adjustment finds that the conditions imposed and agreements made have not been or are not being fulfilled by the holder of a conditional use permit , the permit shall be terminated and the operation of the use discontinued. If the conditional-special use permit is terminated for any reason, it may be reinstated only after a public evidentiary hearing is held.

(4) The Planning Board and/or Zoning Board of Adjustment may ask for the submission of a preliminary site plan where a site plan is not required by this chapter.

~~—(5) Before any conditional use permit is issued, the Board may ask for advice and recommendation of the Planning Board.~~

(56) Before any conditional-special use permit is issued, the Zoning Board of Adjustment shall make written findings certifying compliance with the specific rules governing the individual conditional-special use and that satisfactory provision and arrangement has been made concerning the following where applicable:

(a) Satisfactory ingress and egress to property and proposed structures thereon with particular reference to automotive/pedestrian safety and convenience and traffic flow and control.

(b) Provision of off-street parking and loading areas where required, with particular attention to ~~the items in division (C)(6)(a) above~~ingress, egress, traffic flow, and the economic, noise, glare and odor effects of the conditional-special use on adjoining properties in the area.

(c) Utilities with reference to locations, availability and compatibility.

(d) Buffering with reference to type, location and dimensions.

(e) Playgrounds, open spaces, yards, landscaping, access ways and pedestrian ways with reference to location, size and suitability.

(f) Building and structures with reference to location, size and use.

(D) Temporary uses. Except as otherwise provided in this chapter, the Zoning Board of Adjustment may grant a temporary use permit to allow a use not ordinarily permitted in the district, provided that the permit has a fixed expiration date, and the applicant satisfies any conditions imposed by the Zoning Board of Adjustment.

(E) Watershed Review Board. Unless Watershed Review Board functions are otherwise designated by the Mills River Town Council, the Mills River Zoning Board of Adjustment shall hear and decide cases which arise from appeals or may perform other proper administrative functions pursuant to the provisions set forth in the Mills River Town Code.

(F) Major Special Uses. The Zoning Board of Adjustment shall have the authority to hear and grant, grant with conditions or deny an application for a Major Special Use Permit where the Mills River Town Council has determined that the Mills River Town Council cannot hear the application due to conflict of interest, bias, lack of a quorum or other similar reasons and has specifically delegated its authority to hear and decide the application to the Zoning Board of Adjustment by resolution. In such event, the Board of Adjustment shall have all of the powers and duties of the Town Council as defined in § 154.180(A). Notice requirements of § 154.182 shall apply.

(Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00083, passed 10-10-2013; Am. Ord. 2021-06, passed 4-22-2021; Am. Ord. 2022-18, passed 12-8-2022)

§ 154.180 POWERS AND DUTIES OF MILLS RIVER TOWN COUNCIL.

(A) Major Special Uses; conditions governing application. The Mills River Town Council shall have the power to grant, in particular cases and subject to appropriate conditions and safeguards, permits for Major Special Uses as authorized by this chapter and set forth as special uses under the various use districts.

(1) The Mills River Town Council shall not grant a special use permit unless and until:

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

(b) An evidentiary hearing is held. Notice of the hearing shall be given per § 154.182.

(2) If the Mills River Town Council finds that in the particular case in question the use will meet all of the required general standards (see § 154.138) and the applicable specific site standards or site conditions, a permit may be granted. In granting such a permit, the Mills River Town Council may designate the conditions in connection therewith as will, in its opinion, assure that the proposed use will conform to the requirements and spirit of this chapter.

(3) If at any time after a special use permit has been issued the Mills River Town Council finds that the conditions imposed and agreements made have not been or are not being fulfilled by the holder of a special use permit, the permit shall be terminated and the operation of the use discontinued. If a special use permit is terminated for any reason, it may be reinstated only after an evidentiary hearing is held.

(4) The ~~Planning Board and/or~~ Town Council may ask for the submission of any additional information or evidence relevant to the determination of whether the proposed special use meets the applicable requirements of this chapter.

~~—(5) Before any special use permit is issued, the Mills River Town Council shall ask for advice and recommendation of the Planning Board.~~

(56) Before any special use permit is issued, the Mills River Town Council shall make written findings certifying compliance with the specific rules governing the individual special use and that satisfactory provision and arrangement has been made concerning the following where applicable:

(a) Satisfactory ingress and egress to property and proposed structures thereon with particular reference to automotive/pedestrian safety and convenience and traffic flow and control.

(b) Provision of off-street parking and loading areas where required, with particular attention to ~~the items in division A(6)(a) above~~ ingress, egress, traffic flow, and the economic, noise, glare and odor effects of the special use on adjoining properties in the area.

(c) Utilities with reference to locations, availability and capability.

(d) Buffering with reference to type, location and dimensions.

(e) Playgrounds, open spaces, yards, access ways and pedestrian ways with reference to location, size and suitability.

(f) Building and structures with reference to location, size and use.

(B7) Variances. The Town Council shall be authorized, upon application, to approve variations or modifications of any regulation or provisions of this chapter for any special use so that the spirit of this chapter is observed, public safety and welfare secured and substantial justice done; however, the Town Council shall not permit a use of land, building or structure which is not allowed in the district involved.

(1a) The Town Council may issue a variance only on the basis of affirmative findings of fact for all of the following criteria:

(a)1. There are practical difficulties or unnecessary hardships in carrying out the strict letter of this chapter, as demonstrated by the following :

1.a. If the applicant complies with the literal terms of this chapter, he or she cannot secure a reasonable return from, or make a reasonable use of, his or her property .

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

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

(b)2. The variance is in harmony with the general purpose and intent of this chapter and will preserve its spirit.

(c)3. The variance will secure the public safety and welfare and will do substantial justice.

(2b) The existence of a nonconforming use of neighboring land, buildings or structures in the same district or permitted or nonconforming uses in other districts shall not constitute a reason for the requested variance.

(3e) A notice that describes the variance requested, property location and time and place of the hearing shall be published ~~in a newspaper as a legal notice in a local newspaper of general circulation not less than 5 days before the hearing date. A second notice shall be published in the same newspaper as a commercial advertisement between the legal notice date and the hearing date, and posted on the property, per §154.182.~~

(CB) The Mills River Town Council may establish and maintain a fee schedule to recover costs of legal notices, posting the property and notifying adjacent property owners . These fees shall be paid by the applicant before a special use permit is issued. Additionally, the applicant shall be required to pay the cost of any special experts or studies which the Town Council and the applicant agree are necessary to evaluate the application.

(DG) The Mills River Town Council shall have the authority to delegate the power to hear and grant, grant with conditions or deny an application for a Major Special Use Permit to the Zoning Board of Adjustment by resolution, where it determines that the Mills River Town Council cannot hear the application due to conflict of interest, bias, lack of a quorum or other similar reasons. In the event the Board of Adjustment shall have all of the powers and duties of the Mills River Town Council as defined in § 154.180(A) above. In adopting such a resolution, the Mills River Town Council shall state with specificity the reasons that it could not hear the application.

(~~ED~~) Voting for special uses . The consideration of a special use permit is a quasi-judicial matter. The granting of a special use permit shall require the concurring vote of a majority of the Town Council . For purposes of this section, vacant positions on the Town Council and members who are disqualified from voting on quasi-judicial matters shall not be considered members of the Town Council for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

(Ord. passed 3-1-2004; Am. Ord. passed 7-29-2004; Am. Ord. passed 10-13-2005; Am. Ord. 00083, passed 10-10-2013; Am. Ord. 00094, passed 12-11-2014; Am. Ord. 2021-06, passed 4-22-2021)

§ 154.181 APPEALS TO COURT.

Appeals from decisions of the Zoning Board of Adjustment and the Mills River Town Council shall be taken to the appropriate court of record as provided by law. Appeals must be filed within 30 days from the date the Zoning Board of Adjustment or the Mills River Town Council issues its order.

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

§ 154.182 NOTICE REQUIREMENTS FOR QUASI-JUDICIAL PUBLIC HEARINGS.

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

(A) Notice of hearings shall be mailed by USPS certified mail, no return receipt service, to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; and to the owners of all parcels abutting the parcel of land that is the subject of the hearing. Notice shall be deposited in the mail at least 10 days, but not more than 25 days prior to the date of the hearing.

(B) Notice shall be placed via prominently posted notice of hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way not less than 10 days, but not more than 25 days prior to the date of the hearing.

(Ord. 00083, passed 10-10-2013; Am. Ord. 2021-06, passed 4-22-2021)