

Town of Mills River
Minutes of the Planning Board
Tuesday, December 1, 2020

The Town of Mills River Planning Board met on Tuesday, December 1, 2020, at 6:300 PM in the Mills River Town Hall. Board members present were: Sherri Hill, Ryan Perry, Jim Foster, Mary Ann Osby, James Cantrell, Wayne Carland, and Matt Holloway. Cheryl Janoski attended via "Zoom". Heath Wiggins (excused) was absent. Staff present were Town Manager Daniel Cobb and Tax Collector/Deputy Town Clerk Aurelie Taylor.

Approval of the Minutes

Ryan Perry made a motion to accept the minutes of October 6, 2020 as presented. Sherri Hill seconded the motion and the motion passed by unanimous verbal assent.

Public Comment: Two Public Comment emails were received prior to the meeting. Town Manager Daniel Cobb read them both. The text of each appears below:

Mr Cobb, I will not be able to join the meeting tonight, but wanted to state my continued concern over the noise from 26 Cook Lane. There have been several "loud" events at the location over the past few months. The events are louder than "normal" residential gatherings. On Monday, October 26 there was a gathering in which my family could hear the music and the words as well as the laughing and unfortunately the belching of attendees. We are located down the street and you could even make out conversations. I called the police shortly after 9 pm and requested a call back of which I did not receive. The music and partying lasted until around 10:30 pm. This is not acceptable. I would like to ask the council how they would feel if at any given time there could be such obtrusive noise coming from what is now deemed "the party house" when you are trying to enjoy a cookout or time around the fire pit with your family.

Thank you,
Itha Trantham
114 E. Chippendale Drive

Dear Members of the Planning Board of Mills River,

Last night I went out into my backyard a bit before 10. I wanted to catch a glimpse of the moon and the snow clouds. It was peaceful. It was quiet. And then the silence was disrupted by a truck applying its airbrakes as it moved over the rumble strips to stop at the intersection of Banner Farm and Schoolhouse Road. Then it started up again to go through the intersection and hit the other rumble strips. And then there was another truck.

The above is an example of one noise concern I have. Here is a list of all concerns I have at this moment.

1. Increased noise of through traffic. In particular that of trucks with air brakes and that idle instead of being turned off.

2. Businesses that have bands and outdoor events. I believe an end time of 9pm is appropriate for a community such as Mills River. In cases where a venue would like to have festivities past 9pm, possibly a special permit would have to be required, approved, and a monetary fee applied such as \$100 for each additional hour of operation.

3. The vibration and hum created by small and large equipment operation, needs to be addressed. Norafin is the example I will use for this. There is a vibration and hum that is emitted from Norafin that once you become aware of it, you cannot unhear it. One night the sound was so loud that I walked out to the street to look for the big rig I thought was idling in my neighborhood. Seeing nothing, I contacted a neighbor to see if they knew what was going on. They said "Welcome to my world! That is Norafin.". Their house is situated such that you can hear and feel the vibration in their house more often than not.

4. Mortar rounds or cannons firing and high powered gun shooting. About a month ago, there were several explosive type sounds that vibrated the house. Neighbors said they believed it was mortars or cannons being fired.

I understand the task of deciding what the noise ordinance will be for the Town of Mills River is not simple. My hope is that you will find examples of how it was done in towns similar to Mills River, so that it will proceed quickly and with ease, keeping the best interest of the residents first and foremost.

Kind regards,
Bettye Dorn
Wedgewood Subdivision

Melissa Rayfeild attended the meeting with the intention of offering public comment, but was uncomfortable with the number of other attendees and left; Town Manager Danie Cobb told the Planning Board that he hoped she would email her comments instead before the end of the meeting.

Old Business:

A. Comprehensive Plan Input Review

Town Manager Daniel Cobb presented a summary of the public input. He went over how the information was gathered; some in person and some on-line. While comments and suggestions will be accepted until February 26, a draft will be presented to Town Council in January and come back to Planning Board in February. Any updates or changes will be done in March, and a final draft should come to Planning Board at their April 6 meeting. Board members can reach out to our contract Planner, Alan Steinbeck if they have any questions or comments.

New Business:

A. Circle K Subdivision

Town Manager Daniel Cobb explained that this subdivision is required to come before Planning Board because all commercial subdivisions are considered major subdivisions. He presented his staff report, the text of which appears below along with the site plans and application:

STAFF REPORT

Planning Board, Tuesday, December 1, 2020

Title: Circle K Subdivision Application MS-20-02

Planning Board will consider approval of a major subdivision of the James A. Goode property located at 140 Emma Sharp Drive.

Speaker: Daniel Cobb, AICP, CFM, CZO, Town Manager

From: Administration

Planning

Background

On October 26, 2020 the Town received a subdivision plat from Bowman Consulting for the subdivision of Parcel ID 9632609234 to create a new 1.8 acre parcel out of the existing 15.37 acre parent tract (Attachments A,D).

The subdivision is the future site of a Circle K gas station and convenience store.

Discussion

Subdivisions are classified in one of four different categories: minor, family, nonstandard, or major. Major subdivisions of residential properties are subdivisions resulting in more than 10 lots, these require Planning Board approval. The proposed subdivision (MS-20-02) is of a property currently classified as commercial and the end user will also be a commercial use. Therefore this is a commercial subdivision.

According to Town Code §153.045, "all commercial or industrial subdivisions...shall be reviewed by the Planning Board under the procedure for major subdivisions, regardless of the number of lots proposed."

The Planning Board's role in this process is to assess the application for impacts to the orderly growth and development of the town. Additionally the Board should review the development plan for general conformity with the Town's development standards. For example, road design, subdivision design, or lots created.

The site plan (Attachment B) indicates general compliance with all relevant Town Standards including lot size and layout, access to a public road, landscaping, and parking area designs.

Policy Analysis

The process for reviewing major subdivisions includes review at the staff level for ordinance compliance and final approval from the Planning Board. The Board's role in this process is to provide additional oversight to ensure all development standards are met. Conditions may be placed on this request to achieve the spirit and intent of the ordinance.

Recommendation

Staff recommends approval of the application as submitted.

The Board's options are as follows:

1. Approve the application as submitted
2. Approve the application with conditions
3. Table the item for additional consideration (up to a maximum of 60 days)

Attachments

Application Number: MS-20-02

ATTACHMENT D
MR-PL-0010
APPENDIX 1

Town of Mills River SUBDIVISION APPLICATION FORM

11/13/2020 Circle K Mills River _____
Date of Application Subdivision Name Application Number

Major Subdivision Minor Subdivision Other

Property Owners Name: James A. Goode

Address: 5674 Old Haywood Rd

City, State, Zip: Mills River, NC 28759

Owner's Agent: Bowman Consulting - Paul Lawler, PE

Telephone No: 980-446-3336

PIN 9632609234 Deed Book/Page DB 1689 PG 46

Zoning District MR-MU Fire District Mills River Town Watershed WS-IV

Location of property to be divided: East side of Boylston Hwy north of Jeffress Rd. and adjacent to Bojangles Restaurant

Type of Subdivision: () Residential (x) Commercial () Industrial Present Use Car sales

No. Lots Created 2 Original Tract Size 15.37 New Tract Size 1.800 No. New Lots 1

Road System: (x) Public () Private () Combination Public and Private

Water System: () Individual () Community (x) Municipal

Sewer System: () Individual () Community (x) Municipal

Fee: \$ 250 Paid _____ Method Check

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

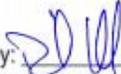


APPLICANT, OWNER OR AGENT)

11/13/20

DATE

TOWN USE ONLY

Received by:  _____

Date: 11/20/2020

Fee Paid: _____

Received by: _____

Date: _____

Development Plan Approval / Conditions _____

There was some discussion and questions for the applicants regarding driveway permits and stormwater runoff infrastructure.

Ryan Perry made a motion to approve the subdivision application for Circle K. Jim Foster seconded the motion and the motion passed by unanimous verbal assent.

B. 160D Review

Town Manager Daniel Cobb gave some background on the legislation combining municipal and county ordinances (160A and 153A respectively). The combinations mostly affects Conditional Use Permits and Special Use Permits, but also requires definitions to conform with state definitions, certain administrative requirements, and Public Hearing notifications. The text of his staff report appears below:

STAFF REPORT

Planning Board, Tuesday, December 1, 2020

Title: North Carolina General Statute 160D Updates

Planning Board will hear a presentation and begin reviewing 160D ordinance modifications.

Speaker: Daniel Cobb, AICP, CFM, CZO, Town Manager

From: Administration

Planning

Background

In North Carolina all local laws are made possible by enabling legislation. This means in order to institute ordinances such as zoning or subdivision there must be a law enabling towns or counties to create such ordinances. Until recently the state enabling legislation for land use ordinances was located within North Carolina General Statute 160A for cities and 153A for counties. In 2019 the General Assembly consolidated these and created 160D. All local development regulations (statewide) must be modified to reflect these changes by July 1, 2021.

Discussion

This law change was made originally in 2019 and modified in 2020. The modification earlier this year had an effective date of June 19, 2020. This modification included extending the deadline for compliance to July 1, 2021.

The majority of the required changes are administrative in nature and do not impact permitting processes or what is or is not allowed in a given locale. For example, from the communication section of Town code:

(A) This subchapter is enacted pursuant to the general police powers granted to the Town of Mills River by G.S. § 160A-174 and G.S. Chapter 160D, Article 9, Part 3.

The only change to this section is deleting “160A, Article 19” and replacing it with “160D, Article 9, Part 3”.

Other changes are more substantive such as prohibition on third-party down-zonings. A third-party down-zoning is one in which a neighbor may file a request to rezone property next door to theirs or in their neighborhood which they do not own to a zoning district of lower classification. From commercial to residential for example.

Attached to this report is a checklist provided by the UNC School of Government to aid jurisdictions in the process of modifying their ordinances. There are three categories listed;

those that are *required* for all municipalities (or counties), those which are *permissive* changes, and several are simply listed for reference and do not require any changes. A permissive change is something that is optional. For example 160D includes a definition for “development”. The Town may choose to incorporate these kinds of permissive changes for consistency purposes.

Policy Analysis

It is good practice for staff, Planning Board, and the elected body to review a town’s code periodically. These required changes are a great opportunity for this review. If the Town does not complete this work by July 1, 2021 the new law (160D) supersedes any local ordinances. This would make permitting very confusing for the Town and those seeking a permit or subdivision review.

Moreover, in order for a community to institute and maintain a zoning code it is required to adopt a comprehensive plan by 2022. Mills River is on track its plan in 2021.

Recommendation

No action required at this time. Additional information will be provided at the meeting on December 1, 2020.

Attachments

A. 160D Worksheet

Daniel then went on to explain that its good to go over a Town’s ordinances on occasion; he suggests that phase one of planned code changes and additions would include looking at a noise ordinance, food trucks, architectural design standards, and erosion control. Phase two could include the changes suggested by the Comprehensive Plan, a tree ordinance, and revision of the sign ordinance. Our Code of Ordinances also has many vague requirements for multifamily construction, parking, signs, multiple structures on parcels in Mixed Use, and landscape requirements. Potential policy changes may include new setbacks for residential development in Mixed use, signs, parking, architectural standards and cluster development. These are only dealing with the land use section of the Town’s ordinances; Alan and Daniel haven’t done a “cover to cover” analysis.

C. Noise Ordinance Overview

Town Manager Daniel Cobb developed four alternatives to how a noise ordinance could be developed and implemented. He wants to get guidance from Planning Board as to what they would like staff to develop as a draft.

STAFF REPORT

Planning Board, Tuesday, December 1, 2020

Title: Noise Ordinance Overview

Planning Board will review various options to address noise complaints in Town.

Speaker: Daniel Cobb, AICP, CFM, CZO, Town Manager

From: Administration

Planning

Background

Over the last couple of years Mills River has seen a growth in breweries and other venues which often have live music performances. The most common noise related complaint is neighbors hearing music from one of these breweries or venues within their home. In response to these complaints Town Council has requested the Planning Board consider options to prohibit these kinds of disturbances.

Discussion

Noise ordinances are common amongst local governments across North Carolina and beyond (Attachment A). Some jurisdictions use time as a determining factor. For example there may be no restrictions during the day until 9:00 PM, after which time sound is limited to a specific decibel reading or is prohibited based on the determination the noise “raucous” or “disturbing.” These terms are subjective terms and difficult to enforce.

Other jurisdictions provide a permitting process for noise producing activities. For example, an establishment might apply for a series of outdoor events over a defined period of time. This permitting process could include specific conditions such as measurable sound after a certain time, or more subjectively, no disturbing noise after a certain time.

Policy Analysis

Town Council has heard several complaints about noise, generally arising from a commercial operation such as a brewery or venue.

Enforcement is a major consideration in developing a noise ordinance or permitting process. Without proper staffing or defensible (measurable) standards it is difficult to compel compliance.

Recommendation

Staff respectfully requests direction from the Planning Board as to which alternative it would like to consider – quantitative or qualitative – or if a new type of permit may serve this purpose in lieu of a new ordinance.

Attachments

- A. Noise Ordinances Alternatives

NOISE ORDINANCE CONSIDERATIONS ALTERNATIVES FOR TOWN OF MILLS RIVER

The following alternatives are recommended by Town of Mills River staff for consideration.

Alternative A

Adopt enforcement of Henderson County Noise Ordinance. Local governments can request enforcement of Henderson County rules in incorporated areas under the existing Henderson County ordinance.

Alternative B

Adopt a new ordinance with time restrictions by use/noise source and quantifiable noise level limits. Include exceptions to restrictions for certain uses and conditions.

Alternative C

Adopt a new ordinance with time restrictions by use/noise source and quantifiable noise level limits. Administer a permit process for exceptions to the standards for special events and certain uses.

Alternative D

Initiate a noise permit requirement enacted by reference in the Code of Ordinances that allows for one time special events or term-based permits with conditions for existing establishments. Would require establishing conditions under which permit is required.

There was much discussion about the topic Alternative A was popular as well as Alternative D. Some spoke in favor of adopting Alternative A and working towards either “tweaking” it to fit Mills River or work on Alternative D in the mean time. Daniel believes that Henderson County will not enforce an ordinance that was different from the County’s, but he will check on that. Chairman Matt Holloway asked that everyone come to the December 15 meeting with specific suggestions and priorities.

D. Meeting Schedule

Historically, the Planning Board met twice a month – the first and third Tuesdays of the month. Several years ago, the Board voted to go to one meeting a month until it became necessary to hold two meetings; Daniel believes with the number of issues that the Planning Board needs to consider that the schedule should be reinstated.

Jim Foster made a motion that the Planning Board meet twice a month on the first and third Tuesday. James Cantrell seconded the motion and the motion passed by unanimous verbal assent.

Town Manager Daniel Cobb then announced that Melissa Rayfield had both emailed her written public comment and was in the “zoom” meeting. She verbally expressed her continuing issues with the Mills River Crossing development; the text of her written comments appears below:

Hi Daniel,

I would have been happy to stay and participate, but unfortunately the room had too many people unmasked.

Thank you for offering to read my comment.

Comment for planning board:

As a native of Mills River I have watched the changes tic up and have been directionly affected by the growth in the past two years. I understand that the board will be looking at a noise ordinance this evening mostly relating to the brewers and music venues and how that impacts the community. I would like for you to consider two other aspects of noise pollution. I have had to withstand construction noise seven days a week for eighteen months. The work can begin before the light comes up and continues well after dark. They began work on Thanksgiving this year which was my breaking point. There needs to be a time in the week where the community can have a reprieve from the noise pollution. It is especially bad at my home because they have built homes that are 3000 to 4500 Sq feet on lots that are less than an acre. This has created an echo chamber between my home and the wall of homes they have built. We can clearly hear a conversation happening far in the distance because of this and the construction noise can not be dampened by music or tv. It shakes the house at times for up to 12 hours a day. This brings up the next noise pollution issue to consider. They are planning to put a dog park and playground in behind our home for 52 houses. Due to this unintended consequence of the wall of homes behind us, the sound from these amenities will diminish our quality of life beyond repair. We request that the planning board put in restrictions that are retroactive that this type of sound must be in the center of a development instead of adjacent to existing homes.

Thanks so much!

Melissa Rayfield

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Chairman Matt Holloway announced that he is resigning from the Planning Board. His professional environment has changed, requiring him to travel more. He feels as though he would not have the time to give the Board the focus it deserves.

As there was no further business to discuss, Jim Foster made a motion to adjourn the meeting. Ryan Perry seconded the motion and the motion passed by unanimous verbal assent.

Respectfully submitted,

Aurelie Taylor, CTC
Tax Collector/Deputy Town Clerk