

**Town of Mills River  
Minutes of the Planning Board  
Tuesday, December 15, 2020**

The Town of Mills River Planning Board met on Tuesday, December 15, 2020, at 6:30 PM in the Mills River Town Hall. Board members present were: Sherri Hill, Jim Foster, Heath Wiggins, James Cantrell, Wayne Carland, and Jeff Moore. Cheryl Janoski and Ryan Perry attended via "Zoom". Mary Ann Osby (excused) was absent. Staff present were Town Manager Daniel Cobb, Planner Alan Steinbeck, and Tax Collector/Deputy Town Clerk Aurelie Taylor.

Vice Chairperson Sherri Hill called the meeting to order and led the Pledge of Allegiance. Afterwards, she introduced the newest member of the Board, Jeff Moore, who, after expressing his gratitude to be able to serve on the Planning Board, gave a short bio and thanked staff for their time participating in the "Santa Tour".

**Approval of the Minutes**

Vice Chairperson Sherri Hill pointed out an error in the minutes on page 8, which stated that "additional information will be provided at the meeting on December 1, 2020." The date should be December 15, 2020. Wayne Carland made a motion to accept the minutes of December 1, 2020 with the correction. Jim Foster seconded the motion and the motion passed by unanimous verbal assent. (Subsequent to the meeting, it was discovered that the error was in a staff report embedded in the minutes and no change was made.)

**Public Comment:** One Public Comment email was received prior to the meeting. Town Manager Daniel Cobb read it. The text of each appears below:

**Subject: Banner Farm/School House/191 Traffic**

Please ask Planning and Zoning to address the following question:

What is the plan for ensuring safe travel and mitigating noise concerns as commercial development in the areas around Banner Farm Rd, School House Rd and Hwy 191 intensifies?

Thank you

Jim Sawyer

Melissa Rayfield addressed the Board via Zoom. She reiterated her issues with noise from the construction at Mills River Crossing and expressed concern about the size of the houses being larger than the approved plans and outdoor amenities to be built also not on the original plans.

**Old Business:**

**A. Election of Chairperson/Vice Chairperson**

Vice Chairperson Sherri Hill asked for nominations for the position of Chairman of the Planning Board. Heath Wiggins nominated Sherri Hill. No other nominations were received, and Jim Foster seconded the nomination. Sherri Hill was voted Chairperson unanimously.

She then requested nominations for Vice Chairperson of the Planning Board. Heath Wiggins nominated Jim Foster. No other nominations were received, and Sherri Hill seconded the nomination. Jim Foster was voted Vice Chairperson unanimously.

**B. Comprehensive Plan Input Review**

Town Manager Daniel Cobb gave a quick overview of the schedule outline and passed out paper copies of the first draft. No action is requested tonight, but the Board should read the document and give feedback as soon as they can. Text will go to Town Council on January 28 and Planning Board on February 2.

**C. 160D Review**

Planner Alan Steinbeck went through the changes that weren't simply reference changes, including the following: definitions changed to clarify, changing Conditional Use Permits to "Minor" Special Use Permits (heard by the Board of Adjustment), gross density calculations on cluster development, clarifying the approval process for duplexes, clarifying public hearings into "evidentiary" and "legislative" hearings, and updating conflict of interest ordinances to reflect state law changes. It was mentioned that the entire sign ordinance section needs work.

This is a preliminary draft and can be changed, depending on feedback from Planning Board. The final changes have to be adopted by July 1, 2021.

**New Business:**

**A. Noise Ordinance**

Town Manager Daniel Cobb introduced the suggestions drafted in the staff report, the text of which appears below:

**STAFF REPORT**

Planning Board, Tuesday, December 15, 2020

**Title: Zoning Text Amendments**

Planning Board will review policy language for several code changes.

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

**From:** Administration

Planning

**Background**

The noise ordinance component of this packet was discussed at the Board's meeting on December 1, 2020. The attachments to this report include the supplemental information for consideration.

**Discussion**

As previously discussed Town Council has requested the Planning Board develop several new ordinances. These are noise, food trucks, architectural standards, and erosion control.

Information regarding architectural standards will be presented during the Board's meeting.

**Policy Analysis**

Prior to the development of new ordinance language the Board must decide, from a policy perspective, what it feels is appropriate. For example, whether or not food trucks are appropriate in only certain districts or all areas of town. Whether or not erosion control standards apply to residential development or only commercial and other similar considerations.

**Recommendation**

Staff respectfully requests direction from the Board. With this input Staff will develop the language these new ordinances for presentation in January 2021.

**Attachments**

A. Noise Ordinances Policy Considerations

B. Food Truck Policy Considerations

**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.

**ATTACHMENT A**

**POLICY RECOMMENDATIONS**

**SUMMARY OF RECOMMENDED POLICY**

Type: Hybrid of Alternative A and Alternative D

Max Levels: Quantifiable limit (set low) to the amount of noise allowed by right

Time Scope: Reduced limits between 9:00pm and 7:00am

Use Scope: Venues with music, construction noise, home occupations, and neighborhoods

Exempt: Industrial uses, agriculture

Zoning: Same requirements for all districts

Permit: Permit required to exceed limits

Enforcement: Police or Town may measure noise level to substantiate violation

Town issues notices of violation and collects fines

Penalty: Warning or notice of need for permit

First offense - \$500 fine

Second offense - \$1,000 fine and loss of permit for six months

Subsequent offenses - \$1,000 fine (irrespective of permit status)

Permits: Issued by Town as temporary use permit

Issued with a duration of 12 months  
May be renewed given no violations within the last 6 months  
Req. Action: Request Henderson County enforce its noise ordinance within Town Limits  
Draft and adopt noise level and time of day requirements in Code  
Reflect essential elements of temporary use permit process in Code  
Establish procedures for notices of violation and permit renewal  
Work with Henderson County Sheriff's Office on enforcement protocols  
Purchase sound level meter for Town use  
Ensure staff capacity and training on devices and measurement  
Proactively work with stakeholders on initial permitting

#### ATTACHMENT A

## FULL NOISE ORDINANCES BY JURISDICTION HENDERSON COUNTY

### 18-1. Authority; Title

This chapter is hereby adopted under the power and authority granted to counties by N.C.G.S. 153A-121 and N.C.G.S. 153A-133 and shall be known and may be cited as the "Henderson County Noise Ordinance."

### 18-2. Jurisdiction

This chapter shall apply to all unincorporated areas of Henderson County and to those incorporated areas of any city or town specifically requesting its enforcement by Henderson County upon the consent of the Henderson County Board of Commissioners. (In making such a request, the city or town must comply with the requirements of N.C.G.S. 153A-122.)

### 18-3. Loud And Disturbing Noise Prohibited

Subject to the provisions of this section, it is prohibited in Henderson County to create, cause or allow the continuance of any unreasonably loud, disturbing noise. Noise of such character, intensity and duration as to be detrimental to the health, safety or welfare of any reasonable person of ordinary firmness and sensibilities in the vicinity is prohibited. For the purposes of this section, the following definitions shall apply:

- "Unreasonably loud": noise which is substantially incompatible with the time and location where created to the extent that it creates an actual or imminent interference with peace and good order.
- "Disturbing": noise which is perceived by a person of ordinary firmness and sensibilities as interrupting the normal peace and calm of the area.
- In determining whether a noise is unreasonably loud and disturbing, the following factors incident to such noise are to be considered:
  - Time of day;
  - Proximity to residential structures;
  - Whether the noise is recurrent, intermittent, or constant;
  - The volume and intensity;
  - Whether the noise has been enhanced in volume or range by any type of mechanical means;
  - The nature and zoning of the area;
  - Whether the noise is related to the normal operation of a business or other labor activity or is the result of some use for individual purposes; and
  - Whether the noise is subject to being controlled without unreasonable effort or expense to the creator thereof.

The following acts, among others, are declared to be loud and disturbing in violation of this section if they annoy or disturb the quiet, comfort or repose of any reasonable person of ordinary firmness and sensibilities in the vicinity where created, caused, or continued, but this enumeration shall not be deemed to be exclusive.

The use of any loud, boisterous or raucous language, yelling, or shouting, whether or not amplified. The congregation of persons at and participation in any party or gathering of people from which noise emanates of a sufficient volume or of such nature as to disturb the peace, quiet and comfort of any reasonable person of ordinary firmness and sensibilities in the vicinity.

## ATTACHMENT A

The keeping, owning, possessing, harboring or controlling of any animal or bird which barks, bays, yelps, howls, cries, squawks or makes any other unreasonably loud, disturbing noise continuously or incessantly for a period of 10 minutes or intermittently for a period of 30 minutes or more, thereby causing a noise disturbance.

The playing of any radio, television, phonograph, drum, musical instrument, or sound production, reproduction or amplification equipment in such manner or with such volume, particularly during the hours between 11:00 p.m. and 7:00 a.m., so as to annoy or disturb the peace, quiet, comfort or repose of any person of ordinary firmness and sensibilities in the vicinity.

The playing of any radio, cassette player, compact disc, or other similar device for production or reproduction of sound located in or on any motor vehicle on a public street, highway, within a public vehicular area, within the motor vehicular area of any public or private parking lot or park or on the premises of a private residence in any unreasonably loud or disturbing manner as defined above.

The intentional sounding of any horn or signal device on any automobile, motorcycle, bus or other vehicle except as a danger signal or as required by law, so as to create any unreasonably loud or disturbing noise as defined above, or the sounding of such a device for an unnecessary and/or the sounding of such a device for an unreasonable period of time.

The operation of any automobile, motorcycle or other vehicle, or remote control model vehicle in such a manner as to create loud grating, grinding, rattling, screeching of tires, or other unreasonably loud or disturbing noise.

The repair, rebuilding or testing of any motor vehicle, particularly during the hours between 11:00 p.m. and 7:00 a.m., which creates unreasonably loud and disturbing noises.

Operating or permitting the operation of any motor vehicle or motorcycle not equipped with a muffler or other device in good working order so as to effectively prevent loud or explosive noises therefrom or which has its muffler-exhaust or other noise control equipment removed, altered or maintained in such disrepair as to create unreasonably loud and disturbing noises.

Operating or permitting the operation of any motor vehicle or motorcycle that engages in jackrabbit starts, spinning tires, racing engines or other operations which create unreasonably loud and disturbing noises.

The creation of any excessive noise on any street adjacent to any school, institution of learning, library or sanitarium, or court while the same is in session, or adjacent to any hospital or any church during services, which unreasonably interferes with the working of such institution.

The firing, shooting or discharging of any firearm for the sole purpose of making noise or disturbance.

### **18-4. Exceptions**

The following uses and activities, among others, are not governed by and shall be exempt from the noise ordinance set forth in this chapter. It is expressly provided, however, that the following enumeration shall not be deemed or considered exclusive, and any activity that is not expressly prohibited as set forth in §18-3 shall be exempt from this chapter.

## ATTACHMENT A

- Noise made by dogs while they are being lawfully used for hunting or taking wildlife, and noise made by dogs during the course of lawful training by hunters, pursuant to N.C.G.S. Chapter 113, Article 21.
- Noise associated with or resulting from the normal operations of any facility that is properly licensed by the North Carolina Department of Agriculture, Veterinary Division, as a boarding kennel, pet shop or dealer, in accordance with the North Carolina Animal Welfare Act (N.C.G.S.19A, Article 3), as may be amended, or from any animal shelter that is operated by Henderson County.
- Noise associated with any legal operations of any firearms club or association legally established.
- Noise caused by the discharge of firearms by law enforcement officers in the performance of

their official duties or during the course of official firearms training.

- Noise resulting from farming operations, including but not limited to noises generated by machinery, equipment and farm animals.
- Noise associated with any event held in recognition of a community celebration of national, state or county events or public festivals.
- Noise associated with any public or private school activity or camp activity (defined as any function or activity approved by or generally associated with any recognized public or private camp for children accredited by an appropriate national camp association, but not including activities associated with campgrounds available to the public for overnight camping), except that it shall be unlawful for any person to use any unreasonably loud, disturbing, boisterous, raucous language or shouting in violent or offensive manner while attending such activities.
- Noise associated with the chimes or bells of businesses, schools, camps or religious institutions in the daytime hours, provided that they operate for no more than 10 minutes in any hour.
- Non-amplified crowd noise resulting from activities by student, government, camp or community groups.
- Noise associated with or resulting from operations of any construction, commercial, industrial or agricultural activities or operations, except for electronically amplified sound and acts prohibited by §18-3.

If any exceptions stated in this chapter would limit obligation, limit liability or eliminate either an obligation or a liability, the person who would benefit from the application of the exception shall have the burden of proving that the exception applies and that the terms of the exception have been met.

#### **18-5. Noise Complaint Procedure**

In the event any person has reasonable grounds for believing that any provision of this chapter is being violated, he may make a report thereof to the Henderson County Sheriff's Department, which shall investigate the alleged violation. If any such investigation reveals a violation, the investigating deputy has the authority to cause a written complaint to be made and may obtain criminal process for violation thereof, may issue a citation for a civil penalty, and may obtain other enforcement measure as allowed in this Chapter. Criminal process for violation of this Chapter may only be obtained by personnel from the Henderson County Sheriff's Department.

Filing false reports. It shall be unlawful for any person to file a false report with law enforcement, or to provide false information to an officer involving any investigation of any reported violation of this article. Any person found violating this provision shall be guilty of a Class 3 misdemeanor and shall be fined not more than \$500.00.

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Frivolous or unfounded complaints. It shall be unlawful for any person to repeatedly file frivolous or unfounded complaints with law enforcement in order to intimidate or harass any member of such department or any animal owner, or to otherwise hinder or interfere with any function of the department of animal control. Any person found violating this provision shall be guilty of a Class 3 misdemeanor and shall be fined not more than \$500.00

#### **18-6. Violations and Penalties; Enforcement**

This chapter shall be enforced in accordance with any and all of the provisions of N.C.G.S. §153A-123 and Henderson County Code Chapter 1, Article II.

In the case of second or subsequent violations of §18-3C(3), any animal which upon investigation by Deputy Sheriff is found to be creating the noise which causes the violation of §18-3C(3) may, in the discretion of such Deputy, be impounded by the Sheriff's Department and confined in the county animal shelter in a humane manner until the next business day for the shelter. See Henderson County Code Chapter 16, Animals, §16-14, Impoundment. The owner of such animal may redeem the animal upon payment of applicable fees. If the animal is not redeemed within 5 days of impoundment, then such animal may be offered for adoption or destroyed in a humane manner pursuant to Henderson County Code §16-14. Impoundment of such an animal shall not

relieve the owner thereof from any penalty, civil or criminal, which may be imposed for violation of this Chapter.

Any Deputy Sheriff of Henderson County, having first investigated this matter pursuant to §18-5, may obtain criminal process for violation of this Chapter. A violation of any noise ordinance provision shall constitute a Class 3 misdemeanor and may be punished by fine in the discretion of the Court, up to a maximum of \$500 per offense.

Planner Alan Steinbeck described how a complaint might play out. A citizen would call the Henderson County Sheriff's Office, who would dispatch an officer. They would use measurable levels to document the complaint. Town staff would enforce the ordinance. Permit would require decibel limits and time duration. There was much discussion on permitting noise, "Jake brakes", not exempting industry, what time is acceptable, how much noise is OK, and how permits should have a responsible person listed as a contact on any permit issued.

Staff will put together some draft language for the next meeting.

Chairperson Sherri Hill requested that the Food Truck discussion be moved up so the interested citizens don't have to sit through the next two items on the agenda.

#### **D. Food Trucks**

Town Manager Daniel Cobb went over an outline of the recommended policy, the text of which appears below:

## **FOOD TRUCKS AND FOOD PARKS OUTLINE OF RECOMMENDED POLICY**

### **Definitions**

Spot: Designated parking space where truck or trailer vendor may operate one unit

Food Park: Designated area where more than one food truck or trailer may park and vend

Food Truck: Mobile vehicle supporting food business

Food Trailer: Mobile food business unit that can be hitched and towed by vehicle

Food Stand: Food business in non-mobile structure with outdoor walk up service

### **Uses**

Zoning: Food truck spots allowed in MR-MU, MR-GB, MR-LI and MR-NC

Food parks allowed in MR-MU, MR-GB, MR-LI and MR-NC

Allowable: Food businesses, temporary farmer food stands, pavilions, recreation

Prohibited: Non-food businesses, overnight parking/camping

Principal: Food parks allowable as a principal use

Accessory: Spots allowable as an accessory use in general (i.e. could go anywhere)

Parks allowable as an accessory use for certain uses (e.g. brewery, industrial area)

Stands allowable as an accessory use/structure for certain uses (e.g. brewery)

### **Requirements**

Spot: Waste station

Walk up access only (i.e. no drive-through arrangements)

Menu and price display

Prohibition on freestanding or temporary signage

Meet setback requirements for zoning districts

Food Park: Up to ten designated spots for vendors

Two tables per permitted vendor spot

Waste station per spot

Walk up access only (i.e. no drive-through arrangements)  
Menu and price display  
Restrooms and hand washing facilities  
Common signage with prohibition on other freestanding or temporary signage  
Four gravel parking spaces for each designated spot  
Permitted driveway  
Landscape buffering from residential areas  
Meet setback requirements for zoning districts

### **Permits**

Spots: Requested by property owner/tenant under temporary use permit  
Spot permit allowed up to one year  
Vendors are required to have a permit to park and sell in spots  
Vendor permits are temporary with a max duration of one year  
Food Park: Park owners/operators function under a special use permit  
Vendors operate under a temporary use permit good for one year  
Vendors: Permits are portable and can park in parks/spots with permission

### **ATTACHMENT B**

### **Enforcement**

Inspection: Spot inspection by staff  
Violation: Warning or notice of need for permit for vendor  
Offense subsequent to warning - \$50 fine per day  
Permits may be revoked for violations that persist over 30 days  
Permits may be renewed given no violations within the last 6 months  
Req. Action: Draft and adopt Code language  
Reflect essential elements of temporary use permit process(es) in Code  
Establish procedures for notices of violation and permit

There were several questions about permits and tables; comments on types of coverings, Health Department inspections, and increased traffic, as well as a discussion on permits and why they would be necessary.

Chairperson Sherri Hill asked if any of the attending citizens wanted to comment on the subject. Mike McLaughlin introduced himself and told the board that he wants to operate a food truck in Mills River at the same site the Amazing Pizza Company has their trailer. He is a resident of Mills River and feels as though his BBQ would help with the need for restaurants in the Town. Because of the pandemic, its almost impossible to get a bank loan to build a restaurant and there are no appropriate buildings existing. Dale Reece, the owner of the property occupied by Amazing Pizza Company, also spoke. He wants to be able to lease a place for Mr. McLaughlin and possibly other food trucks or trailers on that parcel.

Staff will work on draft language and bring this back to Planning Board.

### **B. Architectural Standards**

Earlier this year the Planning Board tightened up the architectural standards for parts of the Town, but in practice, Daniel has run into some ambiguity with enforcement because of wording. He gave three examples; Hills Machinery, Lowes Distribution, and the Circle K shop. Accessory buildings were not addressed at all. Staff has included text regarding this in the 160D text because they are clarifications of an existing ordinance rather than code changes. There is no action necessary – they will be included when 160D is adopted.

**C. Erosion Control**

Town Manager Daniel Cobb explained that the Town has no ordinances regarding erosion control or land disturbance. An erosion control permit would require submission of a plan showing how much soil would be disturbed and how the soil would be stabilized afterwards. Staff has not coordinated with Henderson County on this yet – the County has control of larger projects – the Town would only cover small projects.

Staff will have more specific language for the Planning Board to consider at their next meeting.

As there was no further business to discuss, Heath Wiggins made a motion to adjourn the meeting. James Cantrell seconded the motion and the motion passed by unanimous verbal assent.

Respectfully submitted,

Aurelie Taylor, CTC  
Tax Collector/Deputy Town Clerk