Town of Montreat
Planning & Zoning Commission (P&Z)
Special Meeting Agenda
February 14, 2024, 10:30 a.m.
Montreat Town Hall, 1210 Montreat Rd., Black Mountain, NC 28711
And via Zoom: https://us02web.zoom.us/j/86933563365

I. CALL TO ORDER

- Welcome
- Moment of Silence

II. ADOPTION OF AGENDA

- **Suggested Motion**: To adopt the meeting agenda as presented/amended.

III. LEGISLATIVE HEARING

A. Text Amendment, TA-2024-01 – Amendment to the Town of Montreat General Ordinance

Summary: A Text Amendment request (TA-2024-01), submitted by Wyatt Edsel (on behalf of Gary Higgins, Property Owner) to amend Chapter K Article III Section 305(1) of the Montreat General Ordinance to permit an exception to the built-upon area buffer requirement for impervious driveway or walkway access to residential development when there is a lack of practical alternatives for a road crossing, bridge, or utility crossing.

Suggested Motion: Recommend that the Board of Commissioners approve, approve with revisions, or deny the proposed text amendment (TA-2024-01).

IV. PUBLIC COMMENT

V. NEXT MEETING

- April 25, 2024, 10:30 a.m.

VI. ADJOURNMENT

TOWN OF MONTREAT
NORTH CAROLINA

ORDINANCE AMENDMENT APPLICATION

Town of Montreat Planning and Zoning
1210 Montreat Road, Black Mountain, NC 28711 | (828) 669-8002
REQUIRED FEE: $50.00 (CASH OR CHECK)

INSTRUCTIONS

All applications for amendments to the Town of Montreat's Ordinances must include a completed and signed application and fee, set forth by the Town of Montreat Fee Schedule. Completed applications are submitted to the Town Clerk. All fees must be made payable to the Town of Montreat. Fees are non-refundable except where an application is withdrawn prior to its consideration by the Planning and Zoning Commission. The Zoning Administrator will determine whether the application is complete following its submittal and will notify the applicant via the contact information listed below of the tentative meeting dates that the Planning and Zoning Commission and Board of Commissioners will hear the proposal and of any action taken or decision made concerning this request. All meetings of the Planning and Zoning Commission and Board of Commissioners are open to the public.

APPLICANT INFORMATION

APPLICANT NAME: GARY HIGGINS TELEPHONE: 760 9086537

MAILING ADDRESS: 215 Bims WAY CITY: Bonners Ferry STATE: Id ZIP: 83805

LOCAL ADDRESS: _____ CITY: _____ STATE: _____ ZIP: _____

EMAIL: ghc.secure.1952@gmail.com

PROPOSED AMENDMENT

ORDINANCE TO BE AMENDED: X GENERAL ORDINANCE ZONING ORDINNACE
SUBDIVISION ORDINANCE WIRELESS COMM. ORDINANCE

CHAPTER, ARTICLE, & SECTION TO BE AMENDED: MGO Chapter K Article III Section 305(1)

PROPOSED TEXT IN FULL (ATTACH SHEETS AS NECESSARY): See attached.

STATE THE REASON FOR THE REQUEST (ATTACH SHEETS AS NECESSARY): _____

LIST SUPPORTING & ATTACHED DOCUMENTS: _____

SIGNATURES AND ACKNOWLEDGEMENT

I, GARY HIGGINS, hereby certify that all of the information set forth above is true and accurate to the best of my knowledge.

Gary Higgins — 1/4/24

Signature of Applicant — *Date*

GARY HIGGINS

Printed Name of Applicant

OFFICE USE ONLY

Complete Incomplete

Zoning Administrator Signature — *Date*

Printed Name of Zoning Administrator

Fee:_____ Paid: Yes No Payment Method:_____

Scheduled Planning and Zoning Commission Meeting Date:_____

Scheduled Board of Commissioner Meeting Date:_____

PROPOSED LANGUAGE

Color key for amendments:

→ Existing language to remain
→ ~~Deletion of existing language~~
→ Insertion of new language

MONTREAT GENERAL ORDINANCE
CHAPTER K – ENVIRONMENT
ARTICLE III: STORMWATER MANAGEMENT

305. General Standards

1. All built-upon area shall be at a minimum of 30 feet landward on all sides of any surface water as measured horizontally on a line perpendicular to a vertical line marking the edge of the top of the bank. A perennial or intermittent surface water shall be present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B .0233 (3) (a) or similar site-specific determination made using Division of Water Quality-approved methodology.

a) At the request of the Applicant, the Stormwater Administrator shall grant an exception from the built-upon area requirement in Section 305(1) for impervious driveway or walkway access to residential development when there is a lack of practical alternatives for a road crossing, bridge, or utility crossing as long as it is located, designed, constructed, and maintained to minimize impervious, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of the BMPs. This authority shall be construed to be permissive and not mandatory.

Gary Higgins
215 Bims Way
Bonners Ferry, Idaho 83805
ghc.secure.1952@gmail.com
760-908-6537

February 2,2024

To Whom it May Concern:

My name is Gary Higgins. Last February Montreat granted an easement to my wife and I. The purpose of the easement was to provide access for a driveway and utilities to a vacant lot. The property was "land locked" with no access. The property pin #071077202100000. Prior to granting the easement I had not closed the deal on purchasing the property. We had a contingency clause that stated we would not complete the purchase until we had access. I wasn't going to buy property without access. Prior to completing the purchase I did my homework. I had approvals from both the Army Corp of Engineers and DEQ. Last February the easement was granted and my wife and I completed the purchase. At that point I was told by staff that I needed a grading plan for the driveway. I retained Wyatt Edsel, a local engineer to draw the plan. He drew a preliminary plan. I was informed in December 2023 that by town ordinance (M20 section602) that no driveway could be built. At present, I have a worthless piece of property. The goal posts were truly moved. Beside the cost of the property, I have paid out a considerable amount of money for engineers, surveyors, and attorneys. My believe is that the town staff, attorneys, and commissioners had no idea about the ordinance.

My hope is the commissioners will vote to right this wrong. My wife and I presently live in Idaho. We purchased this property to build our retirement home. The property is near our grandchildren. My wife and I are in our 70's. This financial and emotional kick in the teeth is difficult to overcome. Please seriously consider adopting the proposed amendment. Kayla had done her best to help in this matter. Remember only the town of Montreat has a problem with this 12' driveway. The Army Corp of Engineers and DEQ is fine with it. I was granted and easement to nowhere.

TOWN OF MONTREAT
P.O. Box 423, Montreat, NC 28757
Tel: (828) 669-8002 | Fax: (828) 669-3810
www.townofmontreat.org

Staff Report
TA-2024-01

Text Amendment Request (TA-2024-01) – A Text Amendment request (TA-2024-01), submitted by Wyatt Edsel (on behalf of Gary Higgins, Property Owner) to amend Chapter K Article III Section 305(1) of the Montreat General Ordinance to permit an exception to the built-upon area buffer requirement for impervious driveway or walkway access to residential development when there is a lack of practical alternatives for a road crossing, bridge, or utility crossing.

Created by:

Kayla DiCristina, AICP,
Zoning Administrator
Town of Montreat

Created for:

Town of Montreat Planning and Zoning Commission
February 14, 2024

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REQUEST SUMMARY

Background

Wyatt Edsel, of Edsel Engineering, is representing Gary Higgins ("Property Owner" and "Applicant"), the property owner of PIN# 071077202100000, which is on the eastern side of Harmony Lane ("Subject Property").

The Montreat Zoning Ordinance (MZO) Section 602 dictates that no building, structure, or use of land be permitted until the lot has legal and physical vehicular access to a dedicated and accepted public street. For lots that do not have access to streets, a legal access easement must be established that is a minimum of 12 feet wide, physically passable for vehicular traffic, and be an easement of record and appurtenant to the lot for which it provides access.

The Subject Property was platted under the original plat of Montreat in 1906 (Plat Book 154, page 2) with no access to a street. The Subject Property is separated from Harmony Lane (the nearest public street) by Little Piney Branch. Subsequent platting of the Subject Property through 1984 did not correct the road access issue. On February 9, 2023, the Board of Commissioners granted the Property Owner a thirty-foot access easement from the right-of-way of Harmony Lane across Little Piney Branch to the Subject Property to meet the conditions of Section 602 of the MZO.

Now that the Subject Property has legal access to a right-of-way, the Property Owner wants to construct a single-family dwelling on the Subject Property.

Stormwater Ordinance

Chapter K Article III of the Montreat General Ordinance (MGO) defines built-upon area as:

The portion of a development project that is covered by impervious or partially impervious surface including, but not limited to, buildings; pavement and gravel areas such as roads, parking lots and paths; and recreation facilities such as tennis courts. "Built-upon area" does not include a wooden slatted deck, the water area of a swimming pool, or pervious or partially pervious paving material to the extent that the paving material absorbs water or allows water to infiltrate through the paving material.

Chapter K Article III Section 305(1) of the MGO contains the following language:

All built-upon area shall be at a minimum of 30 feet landward on all sides of any surface water as measured horizontally on a line perpendicular to a vertical line marking the edge of the top of the bank. A perennial or intermittent surface water shall be present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the

Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B .0233 (3) (a) or similar site-specific determination made using Division of Water Quality-approved methodology.

In other words, Chapter K Article III Section 305(1) of the MGO prohibits any impervious surface within 30 feet of a perennial or intermittent stream. A perennial or intermittent surface water (i.e. stream) is present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). No exemptions are given under the MGO unless the stream is determined to be ephemeral by the North Carolina Department of Environmental Quality.

Little Piney Branch is shown on the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). While the Property Owner did not obtain a formal stream determination from the North Carolina Department of Environmental Quality, Little Piney Branch is considered a Water of the United States and is classified as "C" per correspondence with Andrew Moore (Environmental Specialist II, Division of Water Resources). Class C streams are protected due to aquatic life propagation, survival, and maintenance of biological integrity (including fishing and fish). Class C streams therefore have the presence of water either year-round or part of the year (making them either intermittent or ephemeral). Therefore, the built-upon area restriction in Chapter K Article III Section 305(1) of the MGO applies to Little Piney Branch and prevents the Property Owner from installing the needed driveway or bridge across the stream to access the Subject Property. Variances are not permitted in the Town's Stormwater Ordinance. As a note, the Property Owner has been in contact with the United States Army Corps of Engineers (USACE) and the North Carolina Department of Environmental Quality Division of Water Quality (NCDEQ DWR) and has received an OK from both agencies to proceed with his project. The Property Owner's proposed driveway is approved under USACE Nationwide Permit #18 and NCDEQ DWR Water Quality General Certification # 4249.

The Applicant submitted this Text Amendment to allow exceptions to the built-upon area restriction to be granted by the Stormwater Administrator for impervious driveway or walkway access to residential development when there is a lack of practical alternatives for a road crossing, bridge, or utility crossing. The amended text stipulates that the crossing is to be located, designed, constructed, and maintained to minimize impervious surface,

protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable using the Best Management Practices (i.e. stormwater management measures). This text amendment would not apply to structures of residential development (like homes or accessory buildings) or any structures or access to non-residential development.

It is important to note that, as demonstrated later in this staff report, many other jurisdictions that have local stormwater management programs allow exceptions to buffer rules for residential development. This Property Owner is not the only resident of Montreat who has found this buffer to be restrictive for single-family residential development.

EXISTING LANGUAGE

MONTREAT GENERAL ORDINANCE
CHAPTER K – ENVIRONMENT
ARTICLE III: STORMWATER MANAGEMENT

305. General Standards

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PROPOSED LANGUAGE

Color key for amendments:

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a) At the request of the Applicant, the Stormwater Administrator shall grant an exception from the built-upon area requirement in Section 305(1) for impervious driveway or walkway access to residential development when there is a lack of practical alternatives for a road crossing, bridge, or utility crossing as long as it is located, designed, constructed, and maintained to minimize impervious, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of the BMPs. This authority shall be construed to be permissive and not mandatory.

STAFF RESEARCH

DiCristina reviewed the Unified Development Ordinances of Asheville, Black Mountain, Woodfin, Weaverville, Buncombe County, Hendersonville, and Fletcher to examine existing regulations related to exceptions to built-upon area buffers. Verbatim excerpts from these

ordinances are included at the end of this staff report. As a note, not all municipalities regulate stormwater.

City of Asheville Unified Development Ordinance (Chapter 7)

Article XII Section 7.12.2(e)(2)(a)(1) of the City of Asheville's Unified Development Ordinance (UDO) prohibits land disturbance within 30 feet of intermittent or perennial surface waters. Section 7.12.2(j)(2)(a) requires the Stormwater Administrator to grant an exception to this requirement when there is a lack of practical alternatives for a road crossing, railroad crossing, bridge, airport facility, or utility crossing. This section goes on to state that the crossing must be located, designed, constructed, and maintained to minimize disturbance, provide pollutant removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of the BMPs. Subsection b under Section (j)(2) limits the exception to 100 linear feet of disturbance in each 1,000 linear feet of aquatic buffer on the development site. As a note Section 7.12.2 (j)(1) permits an Applicant to apply for a Variance to stormwater requirements.

Town of Black Mountain Unified Development Ordinance (Chapter 8)

Section 8.2.14(C) of the Town of Black Mountain's UDO requires a 30-foot built-upon area buffer to intermittent or perennial surface waters. Section 8.2.16(B) an exception to the built-upon area requirement may be granted when there is a lack of practical alternatives for a road crossing, railroad crossing, bridge, airport facility, or utility crossing. The section goes on to state that the exception must be located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of Stormwater Control Measures. As a note Section 8.2.16(A) permits an Applicant to apply for a Variance to stormwater requirements.

Town of Weaverville Unified Development Ordinance (Chapter 20)

Section 20-1112 of the Town of Weaverville's UDO states that the Town utilizes Buncombe County's stormwater regulations. These regulations are enforced by Buncombe County for the Town of Weaverville.

Town of Woodfin Unified Development Ordinance (Chapter 41)

Section 41-12(a) of the Town of Woodfin's UDO requires a 30-foot built-upon area buffer to intermittent or perennial surface waters. Section 41-12(b) permits access encroachments into the 30-foot buffer for pre-existing lots (those established before the UDO) for the purpose of transportation and access if the following criteria are met:

(1) It is for the purpose of vehicles or non-motorized transportation and access only, such as trails, greenways, walkways, driveways, alley ways or access roads. Residential, accessory or commercial structures are not included in this encroachment allowance;
(2) Utility structures that follow the right-of-way for the access are only allowed within the disturbance area of the roadway, an existing utility easement or bridge structural footprint;
(3) It is the minimum encroachment necessary for access of the property, or is part of a trail, sidewalk or street alignment included on the Town of Woodfin's pedestrian master plan, greenway plan or transportation plan or other approved master plan;
(4) The encroachment area does not exceed more than ten percent of the total land area within the required buffer area, and shall never exceed more than 100 feet of linear disturbance for 1,000 feet of linear stream;
(5) Provides the minimum area of disturbance needed for access and includes mitigation of stream and stream bank disturbance as part of the design;
(6) Encroachments which include stream crossing should be designed so that crossing is perpendicular to the stream centerline to the maximum extent practicable; and
(7) Encroachments which are parallel to the watercourse should be designed to incorporate the maximum buffer practicable and still allow the necessary encroachment. Additional stormwater management techniques to slow and filtrate run-off should be included between the disturbed area and the waterway. Such parallel encroachments may be subject to additional review by the division.
(8) Any encroachment into the required surface water buffer which exceeds this allowance shall require a variance from the board of adjustment.

Buncombe County Unified Development Ordinance (Chapter 26)

Section 26-362 of the Buncombe County UDO requires a 30-foot built-upon area buffer for intermittent or perennial surface waters. Section 26-362(b)(9) permits variances to stormwater regulation requirements, but no other exceptions are stated in the UDO.

Hendersonville Unified Development Ordinance (Chapter 24)

Section 17-3-3 of the City of Hendersonville's UDO requires a 30-foot disturbance buffer to intermittent or perennial surface waters (although this provision is under Stream Protection, not stormwater). Under Section 17-3-5 the Planning Director may permit crossings by streets, driveways, culverts, railroads, recreational features, intakes, docks, utilities, bridges or other facilities. Crossing must meet the following requirements:

1. These crossings shall be allowed provided that they are designed to minimize the amount of intrusion into the stream buffer.
2. The property owner or applicant demonstrates to the satisfaction of the planning director that such facilities cannot be practicably located outside of the stream

buffer, and that any proposed stormwater control structure is sited and designed to minimize disturbance of the stream and stream buffer.

3. Alternate methods of stormwater and erosion control shall be considered prior to approval of such structures in the stream buffers.
4. A vegetated buffer of a width approved by the planning director shall be required around the stormwater control structures.
5. Any land disturbed for these structures shall be revegetated with appropriate native species in accordance with a revegetation plan approved by the planning director.

This section goes on to state that streams may be piped, thereby exempting the piped section of the stream from stream buffer requirements, provided such piping complies with the permitting/certification requirements of the Clean Water Act and any other applicable state and federal regulations. Piping undertaken for the purpose of accommodating public roads, railroads, greenways, recreational facilities and private roads and drives should be designed so that the right-of-way or roadway-and-shoulder width is no more than is necessary considering the design capacity of the facility and so that the proposed stream piping is not substantially in conflict with the other objectives of this section. Where stream piping is approved, a vegetated buffer area or other device shall be provided at any intake or discharge structure. All buffers and physical improvements related to the stream piping shall be located entirely on the site or, pursuant to easement, on lands adjacent to the site.

Town of Fletcher Unified Development Ordinance (Article 6)

Section 6.5(G) of the Town of Fletcher's UDO requires a 30-foot built upon area buffer to intermittent or perennial surface waters. Section 6.5(J)(3) an exception to the built upon area requirement may be granted when there is a lack of practical alternatives for a road crossing, railroad crossing, bridge, airport facility, or utility crossing. The section goes on to state that the exception must be located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of Stormwater Control Measures. As a note Section 6.5(J) permits an Applicant to apply for a Variance to stormwater requirements.

PLANNING AND ZONING COMMISSION ACTION

Per Section 160D-601(a) of the North Carolina General Statute, before adopting, amending, or repealing any ordinance or development regulation, the governing body shall hold a properly noticed legislative hearing. This public hearing was noticed in the Black Mountain Newspaper on January 25, 2024, and February 1, 2024. Section 160D-604 of the North Carolina General Statute states that the governing body may refer any development regulation that is proposed to be adopted to the Planning and Zoning Commission for

review and comment before making their final decision. The Board of Commissioners referred this application to the Planning and Zoning Commission at the February 8, 2024, meeting for a recommendation. The Planning and Zoning Commission must recommend to the Board of Commissioners whether to approve, approve with revisions, or deny the text amendment application. The recommendation from the Planning and Zoning Commission may use the language put forth by the Applicant, by the Town's Legal Counsel, or other agreed-upon language and must clearly state in the recommendation what the proposed amendment would be.

STAFF RESEARCH ORDINANCE EXCERPTS

City of Asheville Unified Development Ordinance (Chapter 7)

Section 7.12.2(e)(2)

a. Land disturbing activity subject to this section shall be undertaken in accordance with the following requirements:

    1. Land-disturbing activity shall not occur within a 30-foot undisturbed buffer around all perennial and intermittent surface waters.

Section 7.12.2 (j)

1) Variances: Any aggrieved person may petition for a variance to the board of adjustment to use one's land in a manner otherwise prohibited by this section. Variances may also be requested from the aquatic buffer requirements, deed restrictions and protective covenants required herein. Reasonable and appropriate conditions and safeguards may be imposed on any variance granted. Merely providing that the variance would permit a greater profit from the property shall not be considered adequate justification for a variance. All of the procedural requirements of the entity charged with granting a variance shall be met by the applicant. Provided however, only the NCDENR—Division of Land Resources may grant a variance or exception as herein below set forth, to aquatic buffers along designated trout streams. The stormwater administrator may support an applicant's appeal for a variance if the applicant's application satisfies all of the following criteria:

    a. Unnecessary hardships would result from strict application of this section.

    b. The hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property.

    c. The hardships did not result from actions taken by the applicant.

d. The requested variance is consistent with the spirit, purpose, and intent of this section; will protect water quality; will secure public safety and welfare; and will preserve substantial justice.

2) Exceptions: The stormwater administrator may approve plans that do not comply with the mandatory standards of subsection 7-12-2(e)(2) of this section if the land disturbing activity is for the construction of facilities to be located on, over, or under a lake or natural water course or work done for the purposes of creating trails, walkways, river access areas, and similar facilities along the rivers, creeks or streams. Where one or more measures required under subsection 7-12-2(e)(2) are not practicable, the stormwater administrator may approve plans provided that additional measures are installed that provide the same level of treatment, discharge and velocity control.
   a. Required exceptions: Notwithstanding the variance allowance herein, the stormwater administrator shall grant an exception from the aquatic buffer requirements, deed restrictions and protective covenants in any of the following instances:

      1. When there is a lack of practical alternatives for a road crossing, railroad crossing, bridge, airport facility, or utility crossing as long as it is located, designed, constructed, and maintained to minimize disturbance, provide pollutant removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of the BMPs.

      2. When there is a lack of practical alternatives for a stormwater management facility; a stormwater management pond; or a utility, including, but not limited to, water, sewer, or gas construction and maintenance corridor, as long as it is located 15 feet landward of all perennial and intermittent surface waters and as long as it is located designed, constructed, and maintained to minimize disturbance, provide pollutant removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.

      3. A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration, or density of the proposed activity and all alternative designs, the basic project purpose cannot be practically accomplished in a manner which would avoid or result in less adverse impact to surface waters.

   b. Limitation of aquatic buffer with a granted exception: Where a temporary and minimal disturbance has been permitted as an exception to the aquatic buffer, to the extent practicable, land disturbing activities in the aquatic buffer shall be limited to a maximum of ten percent of the total length of the aquatic buffer within the site to be

disturbed such that there is not more than 100 linear feet of disturbance in each 1,000 linear feet of aquatic buffer.

Town of Weaverville Unified Development Ordinance (Chapter 20)

Section 20-1112.

The town has consented to the application of the Buncombe County construction and post-construction stormwater control regulations within the town's jurisdiction and all permitting, inspections and enforcement of those regulations shall be conducted by Buncombe County.

Town of Black Mountain Unified Development Ordinance (Chapter 8)

Section 8.2.14.

c. All built-upon area shall be at a minimum of 30 feet landward of all perennial and intermittent surface waters. A perennial or intermittent surface water shall be deemed present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture (USDA) or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B.0233 (3)(a) or similar site-specific determination made using Division-approved methodology. Encroachment allowances may be made as described in 4.3.2.

Section 8.2.16.

A. Any person may petition the Town of Black Mountain for a variance granting permission to use the person's land in a manner otherwise prohibited by this ordinance. The Town of Black Mountain may impose reasonable and appropriate conditions and safeguards upon any variance it grants. To qualify for a variance, the petitioner must show all of the following:

1. Unnecessary hardships would result from strict application of this ordinance.

2. The hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property.

3. The hardships did not result from actions taken by the petitioner.

4. The requested variance is consistent with the spirit, purpose, and intent of this ordinance; will secure public safety and welfare; and will preserve substantial justice.

B. Statutory exceptions. Notwithstanding subsection (A) of this section, exceptions from the 30-foot landward location of built-upon area requirement as well as the deed restrictions and protective covenants requirements shall be granted in any of the following instances:

1. When there is a lack of practical alternatives for a road crossing, railroad crossing, bridge, airport facility, or utility crossing as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of Stormwater Control Measures.

2. When there is a lack of practical alternatives for a stormwater management facility; a stormwater management pond; or a utility, including, but not limited to, water, sewer, or gas construction and maintenance corridor, as long as it is located 15 feet landward of all perennial and intermittent surface waters and as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of Stormwater Control Measures.

    1. A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration, or density of the proposed activity and all alternative designs, the basic project purpose cannot be practically accomplished in a manner which would avoid or result in less adverse impact to surface waters.

    2. The stormwater runoff from the entire impervious area of the development is collected, treated and discharged so that it pass through a segment of the vegetative buffer and is managed so that it otherwise complies with all applicable state and federal stormwater management requirements.

Town of Woodfin Unified Development Ordinance (Chapter 41)

Section 41-12.

a. Setback requirement. All built-upon area shall provide a minimum buffer of 30 feet on all sides of any surface water as measured horizontally on a line perpendicular to a vertical line marking the edge of the top of the bank. A perennial or intermittent surface water shall be deemed present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture (USDA) or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when surface waters are not

present in accordance with the provisions of 15A NCAC 2B .0233(3)(a) or similar site-specific determination made using division approved methodology.

b. Access encroachments. Pre-existing lots and those areas identified in adopted master plans are allowed a minimum encroachment into the 30-foot buffer for the purpose of transportation and access if all of the following criteria are met:

1) It is for the purpose of vehicles or non-motorized transportation and access only, such as trails, greenways, walkways, driveways, alley ways or access roads. Residential, accessory or commercial structures are not included in this encroachment allowance;

2) Utility structures that follow the right-of-way for the access are only allowed within the disturbance area of the roadway, an existing utility easement or bridge structural footprint;

3) It is the minimum encroachment necessary for access of the property, or is part of a trail, sidewalk or street alignment included on the Town of Woodfin's pedestrian master plan, greenway plan or transportation plan or other approved master plan;

4) The encroachment area does not exceed more than ten percent of the total land area within the required buffer area, and shall never exceed more than 100 feet of linear disturbance for 1,000 feet of linear stream;

5) Provides the minimum area of disturbance needed for access and includes mitigation of stream and stream bank disturbance as part of the design;

6) Encroachments which include stream crossing should be designed so that crossing is perpendicular to the stream centerline to the maximum extent practicable; and

7) Encroachments which are parallel to the watercourse should be designed to incorporate the maximum buffer practicable and still allow the necessary encroachment. Additional stormwater management techniques to slow and filtrate run-off should be included between the disturbed area and the waterway. Such parallel encroachments may be subject to additional review by the division.

8) Any encroachment into the required surface water buffer which exceeds this allowance shall require a variance from the board of adjustment.

***Buncombe County Unified Development Ordinance* (Chapter 26)**

Section 26-362 (b)(1)

d. All built-upon area shall be at a minimum of 30 feet landward of all perennial and intermittent surface waters. A perennial or intermittent surface water shall be present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the

Natural Resources Conservation Service of the United States Department of Agriculture of the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B.0233 (3)(a) or similar site-specific determination made using Division-approved methodology.

Section 26-362 (b)(2)

c. All built-upon area shall be at a minimum of 30 feet landward of all perennial and intermittent surface waters. A perennial or intermittent surface water shall be present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture of the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B.0233 (3)(a) or similar site-specific determination made using Division-approved methodology.

Section 26-362 (b)(9) (9)

a. Any person may petition to the board of adjustment or such other local governing body having jurisdiction in the area where the project is located for a variance granting permission to use the person's land in a manner otherwise prohibited by this article. To qualify for a variance, the petitioner must show all of the following:

1. Unnecessary hardships would result from strict application of this article.

2. The hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property.

3. The hardships did not result from actions taken by the petitioner.

4. The requested variance is consistent with the spirit, purpose, and intent of this article; will secure public safety and welfare; and will preserve substantial justice.

Hendersonville Unified Development Ordinance (Chapter 24)

Section 17-3-2

Stream buffers shall apply on each side of the stream and shall measure 30 feet horizontally from the top of the stream bank in a direction perpendicular to the stream flow.

Section 17-3-3

To avoid a loss of effectiveness in protecting streams, the stream buffer shall remain in natural undisturbed forest vegetation and no development or land-disturbing activities shall be undertaken therein, except as provided in section 17-3-5. Furthermore, there shall be a 20-foot transitional

area immediately landward of the stream buffer which may be graded, landscaped and/or used for pedestrian or vehicular purposes so long as no impervious materials are utilized. Certain uses of land, as specified in section 17-3-5, below, may be permitted within the stream buffer so long as they meet the requirements of that section and are designed and constructed to minimize the amount of intrusion into the stream buffer and to minimize clearing, grading, erosion and water quality degradation. Nothing herein is intended to preclude the removal of downed vegetation from the stream bed in order to improve stream flow dynamics. If it is necessary to remove downed or dead vegetation, it should be cut and the root ball left in place to help maintain stability of the shoreline. Nothing herein is intended to [or shall] preclude any activity specifically authorized pursuant to Section 401 and/or Section 404 of the Clean Water Act.

Section 17-3-5

Subject to prior written authorization by the planning director, the following activities may be undertaken within the stream buffer provided they meet all the standards specified herein as well as other applicable provisions of the zoning ordinance:

a. Crossings by streets, driveways, culverts, railroads, recreational features, intakes, docks, utilities, bridges or other facilities shall be allowed provided that they are designed to minimize the amount of intrusion into the stream buffer. Streets and driveways may run generally within and parallel to the stream buffer only where no other access to the property is feasible and when their design minimizes the amount of intrusion into the stream buffer. Crossings with a width of 40 feet or more are permitted only when it has been demonstrated that there is no practical alternative.

b. Stream buffers may be used for passive recreational activities, such as unpaved or paved trails or greenways, provided that service facilities for such activities, including but not limited to parking, picnicking and sanitary facilities, are located outside of the stream buffer. Where practical, such activities shall be kept at least 15 feet from the stream bank.

c. Clearing and revegetating the stream buffer pursuant to a plan approved by the planning director when it has been demonstrated that such clearing and revegetation will improve stream buffer's pollutant removal efficiency.

d. Stormwater control structures and temporary erosion control structures shall be considered utilities for the purposes of this section and may be allowed in stream buffers, provided that:

    1. The property owner or applicant demonstrates to the satisfaction of the planning director that such facilities cannot be practicably located outside of the stream buffer, and that any proposed stormwater control structure is sited and designed to minimize disturbance of the stream and stream buffer.

    2. Alternate methods of stormwater and erosion control shall be considered prior to approval of such structures in the stream buffers.

3. A vegetated buffer of a width approved by the planning director shall be required around the stormwater control structures.

4. Any land disturbed for these structures shall be revegetated with appropriate native species in accordance with a revegetation plan approved by the planning director.

e. Sanitary sewer lines, on an alignment generally parallel to the stream, may be allowed in stream buffers, provided that:

1. The property owner or applicant demonstrates in writing to the satisfaction of the director of water and sewer that the sanitary sewer lines cannot be practicably located outside of the stream buffer;

2. Design and construction specifications minimize damage to the stream and the possibility of line leakage;

3. The sewer line is located at least 15 feet from the top of the stream bank; and

4. The sanitary sewer plan and a plan for revegetating the stream buffer disturbance shall be approved by the director of water and sewer.

f. Streams may be piped, thereby exempting the piped section of the stream from stream buffer requirements, provided such piping complies with the permitting/certification requirements of the Clean Water Act and any other applicable state and federal regulations. Piping undertaken for the purpose of accommodating public roads, railroads, greenways, recreational facilities and private roads and drives should be designed so that the right-of-way or roadway-and-shoulder width is no more than is necessary considering the design capacity of the facility and so that the proposed stream piping is not substantially in conflict with the other objectives of this section. Where stream piping is approved, a vegetated buffer area or other device shall be provided at any intake or discharge structure. All buffers and physical improvements related to the stream piping shall be located entirely on the site or, pursuant to easement, on lands adjacent to the site.

g. Selective removal of invasive exotic species in accordance with a plan approved by the planning director.

h. View corridors are allowed so long as the soil is undisturbed and the natural forest floor, ground cover and understory vegetation are left intact. Pruning associated with the creation and maintenance of a view corridor is exempt. Thinning of the overstory and mid-canopy trees is permissible with the written authorization of the planning director.

Site plan approval by the planning director shall be required for any of the stream buffer intrusions described above. When any of the activities described above involves land clearing, the cleared area

shall be revegetated pursuant to an approved plan. However, where a site plan is not required by any other provision of the zoning ordinance, the director of public works is authorized to approve plans for stream piping and erosion control structures in stream buffers.

Town of Fletcher Unified Development Ordinance (Article 6)

Section G.

6. All built-upon area shall be at a minimum of 30-feet landward of all perennial and intermittent surface waters. A perennial or intermittent surface water shall be deemed present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture (USDA) or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when site-specific determination made using NC Division of Water Quality-approved methodology.

Section J

1. Conditions The Town of Fletcher may impose reasonable and appropriate conditions and safeguards upon any variance it grants. Additional fees shall be required for the technical evaluation of variances that are contracted to another local government or private entity.

2. Applicability Any person may petition the Town of Fletcher for a variance granting permission to use the person's land in a manner otherwise prohibited by this Section. To qualify for a variance, the petitioner must show all of the following:

    a. Unnecessary hardships would result from strict application of the requirements of this Section.

    b. The hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property.

    c. The hardships did not result from actions taken by the petitioner.

    d. The requested variance is consistent with the spirit, purpose, and intent of this Section; will secure public safety and welfare; and will preserve substantial justice.

3. Statutory Exceptions Notwithstanding 6.5.D.2, , Exemptions to Applicability, exceptions from the 30-foot landward location of built-upon area requirement of all perennial and intermittent surface waters as well as the deed restrictions and protective covenants requirements shall be granted in any of the following instances:

    a. When there is a lack of practical alternatives for a road crossing, railroad crossing, bridge, airport facility, or utility crossing as long as it is located, designed,

constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of Stormwater Control Measures.

b. When there is a lack of practical alternatives for stormwater treatment measures.

    i. These measures shall be located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable.

    ii. The implementation of the stormwater treatment measures shall not disturb existing vegetation.

    iii. Minor understory may be disturbed in order to accommodate these measures. Trees and shrubs shall be placed to maximize screening where the encroachment takes place.

c. When there is a lack of practical alternatives for utilities, including, but not limited to, water, sewer, or gas construction and maintenance corridor, as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of Stormwater Control Measures.

d. A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration, or density of the proposed activity and all alternative designs, the basic project purpose cannot be practically accomplished in a manner which would avoid or result in less adverse impact to surface waters.

TA-2024-01
Text Amendment

Montreat Planning and Zoning Commission
February 14, 2024

TOWN OF MONTREAT
NORTH CAROLINA

1

1

Background

- The Montreat Zoning Ordinance (MZO) Section 602 dictates that no building, structure, or use of land be permitted until the lot has legal and physical vehicular access to a dedicated and accepted public street.
- For lots that do not have access to streets, a legal access easement must be established that is…
  1. A minimum of 12 feet wide.
  2. Physically passable for vehicular traffic.
  3. An easement of record and appurtenant to the lot for which it provides access.
- The Wyatt Edsel represents the Applicant & Property Owner of PIN# 071077202100000, which is on the eastern side of Harmony Lane. The Subject Property is separated from Harmony Lane (the nearest public street) by Little Piney Branch.
- The Board of Commissioners granted the Property Owner an access easement across Little Piney Branch on February 9, 2023.

2

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Background

The Montreat General Ordinance (MGO) Chapter K Article III…

Defines built-upon area as:

*The **portion of a development project that is covered by impervious or partially impervious surface** including, but not limited to, buildings; **pavement and gravel areas such as roads, parking lots and paths**; and recreation facilities such as tennis courts. "Built-upon area" does not include a wooden slatted deck, the water area of a swimming pool, or pervious or partially pervious paving material to the extent that the paving material absorbs water or allows water to infiltrate through the paving material.*

Chapter K Article III Section 305(1) contains the following language:

***All built-upon area shall be at a minimum of 30 feet landward on all sides of any surface water** as measured horizontally on a line perpendicular to a vertical line marking the edge of the top of the bank. A **perennial or intermittent surface water** shall be present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B .0233 (3) (a) or similar site-specific determination made using Division of Water Quality-approved methodology.*

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Background

- Little Piney Branch is shown on the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS) and is considered a Class C Water of the United States.
- The built-upon area restriction in Section 305(1) applies to Little Piney Branch and prevents the Property Owner from installing the needed driveway or bridge across the stream to access the Subject Property.
- Variances are not permitted in the Stormwater Ordinance.
- The Applicant submitted this Text Amendment to allow exceptions to the built upon area restriction to be granted by the Stormwater Administrator for impervious driveway or walkway access to residential development when there is a lack of practical alternatives for a road crossing, bridge, or utility crossing.
- The Applicant's proposed Text Amendment would not permit structures associated with residential development or any structures or access for non-residential development to utilize this exception.
- Many other jurisdictions in the region who operate local stormwater management programs in the region permit exceptions to buffers for residential development.

4

4

Existing Language

MONTREAT GENERAL ORDINANCE
CHAPTER K – ENVIRONMENT
ARTICLE III: STORMWATER MANAGEMENT

305. General Standards

1. All built-upon area shall be at a minimum of 30 feet landward on all sides of any surface water as measured horizontally on a line perpendicular to a vertical line marking the edge of the top of the bank. A perennial or intermittent surface water shall be present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B .0233 (3) (a) or similar site-specific determination made using Division of Water Quality-approved methodology.

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APPLICANT Proposed Language

Color key for amendments:

→ Existing language to remain
→ ~~Deletion of existing language~~
→ Insertion of new language

MONTREAT GENERAL ORDINANCE
CHAPTER K – ENVIRONMENT
ARTICLE III: STORMWATER MANAGEMENT

305. General Standards

1. All built-upon area shall be at a minimum of 30 feet landward on all sides of any surface water as measured horizontally on a line perpendicular to a vertical line marking the edge of the top of the bank. A perennial or intermittent surface water shall be present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B .0233 (3) (a) or similar site-specific determination made using Division of Water Quality-approved methodology.

a) At the request of the Applicant, the Stormwater Administrator shall grant an exception from the built-upon area requirement in Section 305(1) for impervious driveway or walkway access to residential development when there is a lack of practical alternatives for a road crossing, bridge, or utility crossing as long as it is located, designed, constructed, and maintained to minimize impervious, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of the BMPs. This authority shall be construed to be permissive and not mandatory

6

6

LEGAL COUNSEL Proposed Language

MONTREAT GENERAL ORDINANCE
CHAPTER K – ENVIRONMENT
ARTICLE III: STORMWATER MANAGEMENT

Color key for amendments:

→ Existing language to remain
→ ~~Deletion of existing language~~
→ Insertion of new language

305. General Standards

a) At the request of the Applicant as set out in the Stormwater Permit Application and shown on the Stormwater site plan submitted in accordance with Section 303 or an Application for an amendment, the Stormwater Administrator may grant a reduction in the surface water buffer or an exception from the built-upon area requirement in Section 305(1) for an impervious driveway or bridge to provide access to Applicant's site or utilities to serve Applicant's site when the Applicant meets the following requirements: (i) the Applicant provides evidence that alternatives for a driveway or bridge to provide access would increase the amount of imperious surface or stormwater runoff, would increase the number of trees and other vegetation removed, or would increase the cost of the driveway, bridge or utility structure sufficiently to make the Applicant's plan impractical or impossible; and (ii) the Applicant's Stormwater site plan shows a driveway, bridge, or utility structure that is located, designed, constructed, and maintained to minimize impervious surface, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of the BMPs. This authority shall be construed to be permissive and not mandatory. The Stormwater Administrator may require the Applicant to provide a letter from the North Carolina Department of Environmental Quality, the United States Army Corps of Engineers and any other federal, state or local governmental agency with jurisdiction stating that the reduction in the surface water buffer meets applicable federal, state and local requirements (other than Section 305).

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STREAM CROSSING EXAMPLES









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8

Planning and Zoning Commission *Action*

- Per Section 160D-601(a) of the North Carolina General Statute, before adopting, amending, or repealing any ordinance or development regulation, the governing body shall hold a properly noticed legislative hearing.
- Section 160D-604 of the North Carolina General Statute states that the governing body may refer any development regulation that is proposed to be adopted to the Planning and Zoning Commission for review and comment before making their final decision.
- The Board of Commissioners referred this application to the Planning and Zoning Commission at their February 8, 2024 meeting.
- The Planning and Zoning Commission must make a recommendation to approve, approve with revisions, or deny the text amendment. The Planning and Zoning Commission must clearly state in their recommendation what the proposed amendment language is. The recommended amendment language can be the Applicant's language, the Town's Legal Counsel's language, or other agreed upon language.

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TA-2024-01 Text Amendment

Montreat Planning and Zoning Commission

February 14, 2024

TOWN OF MONTREAT
NORTH CAROLINA

10

10

January 31, 2024

PROPOSED LANGUAGE (from Susan Taylor Rash, Town of Montreat Attorney)

Color key for amendments:

→ Existing language to remain
→ ~~Deletion of existing language~~
→ Insertion of new language

MONTREAT GENERAL ORDINANCE
CHAPTER K – ENVIRONMENT
ARTICLE III: STORMWATER MANAGEMENT

305. General Standards

1. All built-upon area shall be at a minimum of 30 feet landward on all sides of any surface water as measured horizontally on a line perpendicular to a vertical line marking the edge of the top of the bank. A perennial or intermittent surface water shall be present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B .0233 (3) (a) or similar site-specific determination made using Division of Water Quality-approved methodology.

a) At the request of the Applicant as set out in the Stormwater Permit Application and shown on the Stormwater site plan submitted in accordance with Section 303 or an Application for an amendment, the Stormwater Administrator may grant a reduction in the surface water buffer or an exception from the built-upon area requirement in Section 305(1) for an impervious driveway or bridge to provide access to Applicant's site or utilities to serve Applicant's site when the Applicant meets the following requirements: (i) the Applicant provides evidence that alternatives for a driveway or bridge to provide access would increase the amount of imperious surface or stormwater runoff, would increase the number of trees and other vegetation removed, or would increase the cost of the driveway, bridge or utility structure sufficiently to make the Applicant's plan impractical or impossible; and (ii) the Applicant's Stormwater site plan shows a driveway, bridge, or utility structure that is located, designed, constructed, and maintained to minimize impervious surface, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of the BMPs. This authority shall be construed to be permissive and not mandatory. The Stormwater Administrator may require the Applicant to provide a letter from the North Carolina Department of Environmental Quality, the United States Army Corps of Engineers, and any other federal, state, or local governmental agency with jurisdiction stating that the reduction in the surface water buffer meets applicable federal, state and local requirements (other than Section 305).