Town of Montreat
Planning & Zoning Commission (P&Z)
Meeting Agenda
December 11, 2024, 10:30 a.m.
Assembly Inn (Room – Belk/AI-1), 401 Assembly Drive., Montreat, NC 28757
And via Zoom: https://us02web.zoom.us/j/83777661163

I. CALL TO ORDER

- Welcome
- Moment of Silence

II. ADOPTION OF AGENDA (*pages 1 – 2)*

III. ADOPTION OF APRIL 25, 2024, MEETING MINUTES *(pages 3 - 8)*

IV. ADOPTION OF JULY 18, 2024, MEETING MINUTES *(pages 9 -12)*

V. OLD BUSINESS

- **SUBCOMMITTEE UPDATES**
  i. Hillside Development Subcommittee (*no associated pages)*

  ii. Montreat Sign Ordinance Subcommittee (*no associated pages)*

  iii. Zoning Ordinance Amendments Research Subcommittee (*no associated pages)*

- **COMPREHENSIVE PLAN IMPLEMENTATION**
  i. *See Agenda Item VI – Zoning Administrator Updates & Discussion (no associated pages)*

VI. NEW BUSINESS

- **ADVISORY REVIEW & RECOMMENDATION FOR LEGISLATIVE DECISION**

A. Text Amendment, TA-2024-03 – Amendment to the Town of Montreat Zoning Ordinance (*pages 13 - 20)*

Summary: A Text Amendment request (TA-2024-03), submitted by Mason Blake (on behalf of the Board of Commissioners) to amend Sections 201, 608, and 701.3 of the Montreat Zoning Ordinance to comply with legislative updates from S.L. 2023-108 for private driveway standards and S.L. 2023-137 for electric fences.

Suggested Motion: To recommend to the Board of Commissioners to [approve/approve with revisions/deny] TA-2024-03 as the revisions [are/are not] consistent with the [list of objectives] of Montreat Tomorrow.

B. Text Amendment, TA-2024-06 – Amendment to the Town of Montreat Zoning Ordinance (*pages 21 - 34)*

Summary: A Text Amendment request (TA-2024-06), submitted by Rick Giles (Property Owner of

426 Kentucky Road PIN#072007755800000) to amend Section 310.643 of the Montreat Zoning Ordinance to allow the Zoning Administrator to approve specific minor modifications to Special Use Permits.

Suggested Motion: To recommend to the Board of Commissioners to [approve/approve with revisions/deny] TA-2024-06 as the revisions [are/are not] consistent with the [list of objectives] of Montreat Tomorrow.

- **ZONING ADMINISTRATOR UPDATES & DISCUSSION**

A. Comprehensive Plan Implementation
B. Planning and Zoning Commission 2025 Membership Changes
C. Planning and Zoning Commission Bylaw Amendment
D. Outstanding Text Amendments

VII. NEXT REGULAR MEETING

- TBD

VIII. PUBLIC COMMENT

IX. ADJOURNMENT

Planning & Zoning Commission
Regular Meeting Minutes
April 25, 2024

Board members: Dan Dean
Liz Johnson
Bill Scheu, Chair
John Hinkle
Julie Schell
Allen Crawford – ETJ Representative
Sally Stansill, Alternate Representative (Voting Member) – left at 12:16 p.m.

Board members absent: Daniel Hewitt, Alternate Representative
Bill Tucker

Town staff present: Kayla DiCristina, Zoning Administrator
Angie Murphy, Town Clerk

There were two members of the public present. Mr. Scheu called the meeting to order at 10:30 a.m. and led the group in a moment of silence after a brief welcome.

Agenda Approval

John Hinkle moved to adopt the meeting agenda as presented. Liz Johnson seconded, and the motion carried 6/0.

Adoption of January 18, 2024, Meeting Minutes

Dan Dean and Liz Johnson had some minor changes to the minutes which were noted by the Town Clerk. Liz Johnson moved to adopt the January 18, 2024; Meeting Minutes as amended. Julie Schell seconded, and the motion carried 6/0.

Adoption of February 14, 2024, Meeting Minutes

Dan Dean had a minor suggestion regarding a statement about microphone usage which was noted by the Town Clerk. Mr. Dean also took an opportunity to remind all members of the importance of speaking directly into microphones. Dan Dean moved to adopt the February 14, 2024; Meeting Minutes as amended. Allen Crawford seconded, and the motion carried 6/0.

Subcommittee Updates

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- Hillside Development Subcommittee:
    - Appointments: Liz Johnson (Chair), Bill Scheu (Secretary), and Allen Crawford (new member) – these appointments were made at the Hilliside Development Subcommittee held previously.
    - Liz Johnson stated that this subcommittee will be meeting monthly to continue their review of the Hillside Development Ordinance. The subcommittee is making great progress in their work!
    - The following dates are scheduled meetings: 6/5, 7/11, 8/14, 9/25. All meetings will be held from 9:00 a.m. – 10:00 a.m. and are subject to change if necessary.
- Montreat Sign Ordinance Subcommittee
    - Appointments:
    - John Hinkle advised that the Sign Ordinance Subcommittee had completed their Sign Ordinance review, and more information will be shared at the July P&Z Meeting.
    - Dan Dean briefly reviewed the proposed changes (no punctuation or capitalization changes were listed below) to the Sign Ordinance:
        - Definition for flag has been inserted. Definition for sign has been updated.
        - Definition for banner was also inserted.
        - Definition for Sign, Other temporary was also inserted.
        - Deleted “pole-mounted” – now reads “Banners”.
        - Changed the word “political” to “election”.
        - Changed the time for removal of signs from 2 to 5 days.
        - Changed the word “free-standing” to “ground-mounted”.
        - Changed the word “constructed” to “erected”.
        - Changed “nonconforming” to “noncompliant”.
        - Changed “free-standing” to “ground-mounted”.
        - Changed “device” to “devices”.
        - Add “Section” before 805.25.
        - Insert “Section 804.6” and “804.7”
        - Delete “approximately five”.
        - Change “permitted” to “exempt”.
        - Change “Zoning Administrator to “Town”.
        - Delete “and prior to occupancy”.
        - Insert “no more than prior to 60 days”.
        - Delete “and on”.
        - Delete “or referendum”.
        - Change caption to “Other Temporary Signs”.
        - Change “two days” to “five days”.
        - Add a new section about flags.
        - Add “mounted” to “ground ___sign”.
        - Change caption of “Free-Standing Signs” to “Ground-Mounted Signs”.
        - Add new section entitled “Banners”.
        - Delete Section 806

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        - Renumbered sections for consistency.
    - John Hinkle, on behalf of the Sign Ordinance Subcommittee, moved to present the above changes to the full P&Z Committee at their regular July meeting. No second was required.
- Zoning Ordinance Amendments Research Subcommittee
    - Dan Dean advised that this Committee was still holding until the MRA Lodge issue is resolved.

Comprehensive Plan Implementation

- Environment Objective #6 (Bill Tucker)
  Topic: Exploring conversation easements as an avenue for land protection.
  Bill Tucker and Ms. DiCristina met and discussed the best plan of attack for this objective. They are currently in the information gathering stage of the process. They hope to have something to present at the July P&Z Regular Meeting.

- Environment Objective #12 (Sally Stansill)
  Sally Stansill and Ms. DiCristina reviewed the Hazard Mitigation Plan. Montreat's Hazard Mitigation Plan and Strategies are under Buncombe/Madison Counties Regional Hazard Mitigation Plan. There are specific goals and recommendations for the Town. Ms. Stansill and Ms. DiCristina went through each recommendation to determine the Town's status. Ms. DiCristina advised the whole Commission that today she is looking for either a motion to proceed or to go no further with this item. Ms. DiCristina read each action item and implementation recommendation aloud for the Commission.

  Liz Johnson moved for Zoning Administrator Kayla DiCristina and Sally Stansill pursue the implementation proposals of the Buncombe-Madison Regional Hazard Mitigation Plan tracker document as proposed. Julie Schell seconded the motion and it carried 6/0.

- Development Objective #5 (Bill Scheu)
  Bill Scheu stated that, per Mayor Pro Tem Mason Blake and Commissioner Tom Widmer, there was no desire to proceed with Short Term Rental regulations at this time. Bill Scheu read aloud from an email to the group. Ms. DiCristina advised that STRs could be regulated like any other use but you "can't do anything to them that you wouldn't do to another use".

- Transportation Objective #1 (Sally Stansill)
  Sally Stansill had expressed interest in a traffic calming study along Assembly Drive at an earlier meeting of Planning & Zoning. Ms. Stansill and Ms. DiCristina drafted a memo requesting that the Board of Commissioners allocate funding in their upcoming fiscal year budget for a traffic study or implement specific measures that Ms. Stansill gathered from her own research. Liz Johnson moved to adopt the memorandum to the Montreat Board of Commissioners as drafted by Zoning Administrator Kayla DiCristina and Sally Stansill. Julie

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Schell seconded the motion. Then Julie Schell moved an amendment to the original motion: the following verbiage was added to the memo on the 1st page "the Commission recommends that this objective be pursued during the upcoming fiscal year", on page 2 strike "elevate transportation objective 1 to become a high priority and", the language should read "recommends that the Board of Commissioners pursue action related to this objective". Liz Johnson moved to second the amendment. Bill Scheu suggested striking "recommend" and adding "suggested". Dan Dean moved to strike the "anecdotal paragraph" on page 2. John Hinkle seconded the amendment to the amendment. The amendment carried 6/0. Julie Schell read the proposed language in its entirety. A recording of this meeting can be found on the Town of Montreat's YouTube channel at the following link: Planning & Zoning Commission 4/25/24 (youtube.com). Bill Scheu withdrew his suggested strike-through of "recommend". The chair called for the vote on the above stated amendments. The motion carried 6/0. The chair called for the vote on the recommendation as amended. The motion carried 6/0. A final motion was made to place the memorandum on the upcoming (May) Board of Commissioners agenda. The motion was carried 6/0.

Old Business

There was no Old Business to discuss at this time.

New Business

John Hinkle moved to ask the Town Manager to develop a proactive plan for the residents of Montreat for the disposal of hazardous materials. Julie Schell seconded the motion. The motion was then withdrawn from the table.

Ms. DiCristina advised that the legislature had adopted some new development provisions that the Commission will need to write into the code of ordinances. Ms. DiCristina advised that some text amendments will be required. Ms. DiCristina advised that there are four changes that will need to be addressed by the Planning & Zoning Commission. It was decided to address these changes at the next regular meeting in July unless there was a pending deadline for the changes.

Public Comment

Commissioner Jane Alexander spoke briefly to the conversation about disposal of hazardous waste materials. Commissioner Alexander suggested a small group meet with Town Manager Parrish and Public Works Director Barry Creasman to discuss this matter.

Next Meeting

Thursday, July 18, 2024, at 10:30 a.m.

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Adjournment

John Hinkle moved to adjourn the meeting. Julie Schell seconded and the meeting was adjourned at 12:20 p.m.

_____ _____

Bill Scheu, Chair Angie Murphy, Town Clerk

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Planning & Zoning Commission
Regular Meeting Minutes
July 18, 2024

Board members:

Liz Johnson
Bill Scheu, Chair
Bill Tucker
John Hinkle
Julie Schell
Allen Crawford – ETJ Representative

Board members absent: Daniel Hewitt, Alternate Representative
Dan Dean
Sally Stansill, Alternate Representative

Town staff present: Kayla DiCristina, Zoning Administrator

There were two members of the public present. Mr. Scheu called the meeting to order at 10:30 a.m. and led the group in a moment of silence after a brief welcome.

Agenda Approval

John Hinkle moved to adopt the meeting agenda as presented. Liz Johnson seconded, and the motion carried 6/0.

Adoption of Meeting Minutes

Meeting Minutes for April and July will be up for approval at the next regularly scheduled meeting.

Subcommittee Updates

- Hillside Development Subcommittee (Liz Johnson):
    - Thanked Kayla DiCristina, Allen Crawford and Bill Scheu for participating in the great subcommittee meetings that have been held.
    - This subcommittee meets monthly while reviewing the Hillside Development Ordinance in detail.
    - They've spent a lot of time on the density development chart.
    - The subcommittee has explored ideas from other communities while keeping in mind the Town's Comprehensive Plan.

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- Next meeting is August 14th from 9:00 a.m. – 10:00 a.m.

- Montreat Sign Ordinance Subcommittee (John Hinkle):
  - Some recent new information needs to be reviewed by the subcommittee.
  - Mr. Hinkle hopes to have updates to the full Committee at their October meeting.

- Zoning Ordinance Amendments Research Subcommittee (Bill Scheu):
  - Bill Scheu advised that this Committee was still holding until the MRA Lodge issue is resolved.

Comprehensive Plan Implementation

- Environment Objective #6 (Bill Tucker)
  - Bill Tucker advised there would be a presentation on Conservation Easements & Development Regulations.
  - Defined conservation easements as written legal agreements between a landowner and a separate entity where the landowner gives up certain development rights and limits the use of a specific area of land to protect the conservation value.
  - Many different purposes for a conservation easement.
  - Conservation easements are typically permanent or in perpetuity.
  - The landowner still owns the property. Just giving up development rights to the property.
  - Conservation easements have economic benefits associated with them.
  - NC does not require, nor does it lend the power for a jurisdiction to require public review of conservation easements established within the jurisdiction's territory before the agreement's establishment.
  - Montreat Wilderness. 2,450 acres are owned by the MRA. Purpose of this easement is "to restrict the Property in order to preserve, enhance, restore, and maintain the natural features and resources of the Property, to provide habitat for native plants and animals, to improve, maintain and protect water quality, and to control runoff of sediment".
  - Mission of Southern Appalachian Highlands Conservancy (SAHC) and notable facts were reported.
  - Reviewed other conservation easements in Montreat. Rocky Knob, Asheville Watershed, etc.
  - Eight different organizations within Montreat who are engaged in environmental initiatives are under the umbrella of Montreat Landcare. Visit Town of Montreat Landcare Committee Homepage.
  - Intersection with Municipal Land Use Regulations (Kayla DiCristina)
  - Not all regulations apply to all development.
  - Conversation Easements can be a tool used by municipalities. Other tools are Zoning

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Districts.
- Discussed Montreat's current land use regulations that support conservation.
- Most of the Town's Planning & Development jurisdiction is under a Conservation Easement.
- Reminder: Conservation Easements are tied to a specific conservation purpose.
- Encourage smart development and the highest and best use of land.
- Critically examine the land offered for conservation.
- To review the entire presentation please visit the following link: Planning & Zoning Commission 07/18/24 (youtube.com)

Bill Tucker moved for the P&Z Commission to assign two P&Z Commission Members to attend (virtually or in-person) the Montreat Landcare meetings and to report back to the full P&Z Commission at the regular quarterly meetings. Liz Johnson seconded the motion, and the motion carried 6/0. Bill Tucker and Allen Crawford were assigned as the representatives.

Liz Johnson moved to establish a working group to examine and discuss the Open Space Preservation Plan and return a report to the full P&Z Commission. Julie Schell seconded, and the motion carried 6/0.

- Future steps involve examining the conservation subdivision ordinance to determine if existing standards support what development of a minor or major subdivision should look like. Also, consider implementing open space standards/incentives for non-residential development with special consideration for then these regulations would be effective.

- Environmental Objective #12 & Transportation Objective #1 (previously Sally Stansill)
  - Sally Stansill recently moved from Montreat and resigned from the Planning & Zoning Commission.
  - Environmental Objective #12 deals with the Hazard Mitigation Plan. This objective is currently on hold but there is a plan in place to move forward. Julie Schell volunteered to work on this objective.
  - Transportation Objective #1 deals with traffic issues. A letter of recommendation for a traffic study and traffic related improvements went before the Board of Commissioners and instead of allocating funding at this time in the budget the Commissioners directed Ms. DiCristina, a P&Z Commission member, and Commissioner Tom Widmer to move forward in conversations with the larger landowners in Montreat (MRA, Montreat College) possibly collaborating on a larger study with the hope of grant funding for the Town. This objective is on hold as well.

Liz Johnson moved to appoint Julie Schell as the P&Z Committee Member to support Environmental Objective #12. John Hinkle seconded and the motion carried 6/0.

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Bill Tucker moved to defer the assignment of a new member to Objective #1 until the October Planning & Zoning Meeting. Liz Johnson seconded and the motion carried 6/0.

Old Business

The 2023 Planning & Zoning Legislative Updates were sent out and the ordinance does need to be updated because the changes have gone into effect. John Hinkle moved to direct staff to draft language to address the required legislative changes. Julie Schell seconded, and the motion carried 6/0.

New Business

Ms. DiCristina has received an inquiry regarding a potential text amendment to the Montreat Zoning Ordinance regarding fences. It was decided to schedule a tentative meeting on Thursday, September 19th at 10:30 a.m.

Public Comment

There was no public comment at this time.

Next Meeting

Thursday, October 17, 2024, at 10:30 a.m.

Adjournment

John Hinkle moved to adjourn the meeting. Bill Tucker seconded and the meeting was adjourned at 12:20 p.m.

_____ _____

Bill Scheu, Chair Angie Murphy, Town Clerk

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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: Mason Blake, Mayor Pro Tem TELEPHONE: 828-669-8002

MAILING ADDRESS: PO Box 423 CITY: Montreat STATE: NC ZIP: 28757

LOCAL ADDRESS: 1210 Montreat Road CITY: Montreat STATE: NC ZIP: 28757

EMAIL: zoning@townofmontreat.org

PROPOSED AMENDMENT

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

CHAPTER, ARTICLE, & SECTION TO BE AMENDED: Sections 201, 618, and 701.3

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

STATE THE REASON FOR THE REQUEST (ATTACH SHEETS AS NECESSARY):
To comply with legislative amendments from S.L. 2023-108 & S.L. 2023-137

LIST SUPPORTING & ATTACHED DOCUMENTS:

SIGNATURES AND ACKNOWLEDGEMENT

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

Mason Blake — 8-23-24

Signature of Applicant — *Date*

Mason Blake

Printed Name of Applicant

OFFICE USE ONLY

☑ Complete ☐ Incomplete

Kayla DiCristina — 08/23/24

Zoning Administrator Signature — *Date*

Kayla DiCristina

Printed Name of Zoning Administrator

Fee: $0.00 Paid: ☐ Yes ☐ No Payment Method: n/a

Scheduled Planning and Zoning Commission Meeting Date: 10/17/2024

Scheduled Board of Commissioner Meeting Date: 11/14/2024

PZC date moved due to T.S. Helene to 12/11/2024.
BOC date is 01/09/2025. (KD 11/18/2024)

2023 North Carolina Legislative Session – P&Z Suggested Revisions

Key: Text to Remain | New Text | ~~Deleted Text~~

Private Driveway Design Standards - MZO Section 701.3

701.3 SURFACING.

701.35 Notwithstanding any other regulation adopted by the Town, engineered pavement design standards that do not meet minimum standards required by the Department of Transportation shall be accepted if the proposed design standard is signed and sealed by a duly licensed professional engineer, under Chapter 89C of the North Carolina General Statutes, and meets vehicular traffic and fire apparatus access requirements. This subsection applies to construction of new privately owned driveways, parking lots, and driving areas associated with parking lots within a new development or subdivision that the developer designates as private and that are intended to remain privately owned after construction. If driveways, parking lots, and driving areas associated with parking lots are constructed to pavement design standards that do not meet minimum standards required by a regulation adopted by the local government, as authorized by this subsection, the developer must include disclosures to prospective buyers as outlined in N.C. Gen. Stat. § 136-102.6(f) prior to entering into any agreement or any conveyance with any prospective buyer.

Electric Fences – MZO Sections 201 & 618

Section 201 Definitions

Battery-Charged Security Fence: An alarm system and ancillary components, or equipment attached to that system, including a fence, a battery-operated energizer that is intended to periodically deliver voltage impulses to the fence, and a battery charging device used exclusively to charge the battery.

618.1 NEW FENCE REQUIREMENTS. All new Fences, except those defined battery-charged security fences, installed after the effective date of this Ordinance shall comply with the following requirements:

618.2 Battery-charged security fences are prohibited on properties within the R-1, R-2, and R-3, Zoning Districts. A battery-charged security fence shall:

(1) Interface with a monitored alarm device enabling the alarm system to transmit a signal intended to summon the business or law enforcement in response to an intrusion or burglary.

(2) Be located on property that is not designated by the Town and/or another local government as exclusively for residential use.

(3) Have an energizer that is powered by a commercial storage battery that is not more than 12 volts of direct current

(4) Meets the standards established by the most current version of the International Electrotechnical Commission Standard 60335-2-76.

(5) Be surrounded by a non-electric perimeter fence or wall that is not less than 5 feet in height.

(4) Not exceed 10 feet in height or 2 feet higher than the non-electric perimeter fence or wall, whichever is higher.

(5) Marked with conspicuous warning signs that are located on the battery-charged security fence at not more than 30-foot intervals and read: "WARNING—ELECTRIC FENCE."

618.~~2~~3 PROHIBITED FENCES. ~~Electrically~~ Battery-charged Fences prohibited by and/or not in compliance with Sec. 618.2 above, and sharp metal or glass Fences are prohibited. Barbed wire Fences are prohibited except only for special security or safety needs (such as to limit access to high towers, electrical high voltage sites, hazardous equipment and the like).

618.~~3~~4 EXISTING FENCES

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

Staff Report
TA-2024-03

Text Amendment Request (TA-2024-03) – A Text Amendment request (TA-2024-03), submitted by Mason Blake (on behalf of the Board of Commissioners) to amend Sections 201, 618, and 701.3 of the Montreat Zoning Ordinance to comply with legislative updates from S.L. 2023-108 for private driveway standards and S.L. 2023-137 for electric fences.

Created by:

Kayla DiCristina, AICP,
Zoning Administrator
Town of Montreat

Created for:

Town of Montreat Planning and Zoning Commission
December 11, 2024

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PLANNING AND ZONING COMMISSION RECOMMENDATION 4

REQUEST SUMMARY

The General Assembly convened for their "long session" in January 2023. Their work continued into the Fall of 2023 and produced several noteworthy bills for local development regulation. Of note to the Town of Montreat's Zoning Ordinance are S.L. 2023-108 and S.L. 2023-137. The University of North Carolina Chapel Hill School of Government prepared guidance for local governments to make necessary changes to comply with new regulations. A link to the full legislative bulletin from the School of Government is provided below. Verbatim excerpts relevant to this text amendment are included below.

https://www.sog.unc.edu/publications/bulletins/2023-north-carolina-legislation-related-planning-and-development-regulation

SL. 2023-108

Local government authority to regulate private-driveway standards is limited. Section 3 of S.L. 2023-108 (H.B. 488) adds a new subsection (j) to G.S. 160D-804. The new language provides as follows. Local government pavement design standards for new private driveways must not be more stringent than NCDOT's minimum pavement design standards. Even if a local government has adopted driveway standards consistent with NCDOT, the local government must accept engineered-pavement design standards that do not meet minimum standards if the design is signed and sealed by a licensed engineer and meets vehicular traffic and fire apparatus access requirements. In the case of such driveways that do not meet minimum standards, the developer must provide disclosures to prospective buyers and the local government is discharged from liability. This provision applies to "new privately owned driveways, parking lots, and driving areas associated with parking lots within a new development or subdivision that the developer designates as private and that are intended to remain privately owned after construction." The new section does not limit local government or NCDOT authority "to regulate private roads, driveways, or street connections to a public system, or to regulate transportation and utilities." The provision became effective October 1, 2023.

The Town of Montreat does not have private-driveway standards, but does include surfacing standards for parking spaces for non-residential development (Section 701.3 MZO). As such, language is added to this section stating that paving designs not meeting NCDOT's minimum standards sealed by a licensed engineer are acceptable.

S.L. 2023-137

Section 44 of S.L. 2023-137 (H.B. 600) adds new statutes, G.S. 160A-194.1 and G.S. 153A-134.1, to limit local government authority to regulate battery-charged security fences, especially on nonresidential property.

The Town of Montreat 618 of the MZO prohibits electric fences. Language is proposed to permit electric fences (referred to as "battery-charged security fences") on non-residentially zoned property and to incorporate the requirements for such fences listed in N.C.G.S. 160A-194.1(b). A definition of "battery-charged security fence" is also added to Section 201.

Proposed changes and existing language are provided as supplemental attachments to this staff report.

PLANNING AND ZONING COMMISSION RECOMMENDATION

Section 309.23 of the MZO requires the Planning and Zoning Commission to provide a recommendation to the Board of Commissioners that addresses consistency with the Comprehensive Plan and other matters as deemed appropriate. A link to the Town of Montreat's Comprehensive Plan is provided below.

Montreat Tomorrow Comprehensive Plan

Example Language:

The proposed text amendment [is/is not] consistent with Montreat Tomorrow because…

- [identify policies in Montreat Tomorrow which the amendment is/is not consistent with]
- [identify policies in Montreat Tomorrow which the amendment advances/hinders]

For more information on consistency statements, please review "Plan Consistency and Reasonableness Statements" Guidance prepared by the University of North Carolina – Chapel Hill's School of Government.

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: Rick Giles TELEPHONE: 904.219.0475

MAILING ADDRESS: 145 36th Av S CITY: Jax Bch STATE: Fl ZIP: 32250

LOCAL ADDRESS: 426 Kentucky Rd CITY: Montreat STATE: N.C. ZIP: _____

EMAIL: rgiles@giles-mcivor.com

PROPOSED AMENDMENT

ORDINANCE TO BE AMENDED:
- ☐ GENERAL ORDINANCE
- ☒ ZONING ORDINNACE
- ☐ SUBDIVISION ORDINANCE
- ☐ WIRELESS COMM. ORDINANCE

CHAPTER, ARTICLE, & SECTION TO BE AMENDED: Section 310.643

PROPOSED TEXT IN FULL (ATTACH SHEETS AS NECESSARY): _____

STATE THE REASON FOR THE REQUEST (ATTACH SHEETS AS NECESSARY): To allow Zoning Administrator to amend an approved SUP in specific ways

LIST SUPPORTING & ATTACHED DOCUMENTS: _____

SIGNATURES AND ACKNOWLEDGEMENT

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

Signature of Applicant — *Date*: 9.17.24

Rick Giles

Printed Name of Applicant

OFFICE USE ONLY

☒ Complete ☐ Incomplete

Kayla DiCristina — *Zoning Administrator Signature* — *Date*: 09.18.24

Kayla DiCristina

Printed Name of Zoning Administrator

Fee: $50.00 Paid: ☒ Yes ☐ No Payment Method: _____

Scheduled Planning and Zoning Commission Meeting Date: TBD

Scheduled Board of Commissioner Meeting Date: 11.14.24

PZC date moved due to T.S. Helene to 12/11/2024. BOC date 01/09/2025. KD 11/18/2024

310.64 DECISION OF THE ZONING BOARD OF ADJUSTMENT. The concurring vote of a majority of the members of the Board of Adjustment shall be necessary to grant a Special Use Permit. The Board of Adjustment shall determine contested facts, make decisions within a reasonable time, and base quasi-judicial decisions on competent, material and substantial evidence in the record. Quasi-judicial decisions of the Board shall be in writing and shall reflect the Board's determination of contested facts and their application to standards found in this Ordinance. A quasi-judicial decision is effective upon filing the written decision with the Clerk to the Board. The decision of the Board shall be delivered by personal delivery, electronic mail, or first-class mail to the applicant, the property owner, and any person who has submitted a written request for a copy, prior to the date the decision becomes effective.

310.641 If it approves the Special Use Permit, the Board of Adjustment may impose such conditions as will assure that the Use in its proposed location will be harmonious and with 40 the spirit and intent of this Ordinance. All such additional conditions shall be entered in the minutes of the meeting at which the Special Use Permit is granted and also onto the Special Use Permit and on the plans submitted therewith. All conditions shall run with the land and shall be binding on the original applicant for the Special Use Permit, its heirs, successors and assigns. In order to ensure that such conditions and requirements of each Special Use Permit will be fulfilled, the applicant for the Special Use Permit may be required to provide physical improvements required as a basis for the issuance of the Special Use Permit.

310.642 In addition to the specific conditions required and whatever additional conditions the Board of Adjustment deems to be reasonable and appropriate, Special Uses shall comply with the height, Yard, area and parking regulations of the Zoning District in which the property is located.

310.643 If the holder of the Special Use Permit fails to comply with the plans submitted with the application for the Special Use Permit or fails to comply with any conditions of the Special Use Permit, the Board of Adjustment may revoke the Special Use Permit by following the same process as required for approval of the Special Use Permit. See N.C.G.S. Section 160D-403(f). During the pendency of any such revocation proceedings, the Town and any person(s) operating under a Building Permit(s) shall be subject to the proceedings described in N.C.G.S. 160D-405.

a) Minor Modifications. The Town of Montreat Zoning Administrator is authorized to review and approve administratively minor modifications to an approved Special Use Permit if the minor modification proposes to:

1. Change the location of any building or structure by ten feet or less in any direction.

2. Change the height of any building or structure by ten percent or less.

3. Change the square footage of any building or structure by ten percent or less.

4. Modify the number, location, and/or size of entrances to any building or structure.

5. Add, delete, or relocate architectural elements such as attached steps, roof, gutters, chimneys, dormers and similar fixtures.

These modifications are subject to the following limitations:

1. The modification does not involve a change in uses permitted or the density of overall development permitted.

2. The modification does not increase the impacts generated by the development on traffic, stormwater runoff, or similar impacts beyond what was projected for the original development approval.

3. The modification complies with all development ordinance requirements of the Town of Montreat and other applicable conditions of approval.

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Staff Report
TA-2024-06

Text Amendment Request (TA-2024-06) – A Text Amendment request (TA-2024-06), submitted by Rick Giles (Property Owner of 426 Kentucky Road PIN#072007755800000) to amend Section 310.643 of the Montreat Zoning Ordinance to allow the Zoning Administrator to approve specific minor modifications to Special Use Permits.

Created by:

Kayla DiCristina, AICP,
Zoning Administrator
Town of Montreat

Created for:

Town of Montreat Planning and Zoning Commission
December 11, 2024

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REQUEST SUMMARY

The Applicant, Rick Giles (Property Owner of 426 Kentucky Road PIN#072007755800000), submits this text amendment application to Section 310.643 of the Montreat Zoning Ordinance to allow the Zoning Administrator to approve specific minor modifications to Special Use Permits.

Rick Giles ("Applicant") was granted a Special Use Permit for an Accessory Dwelling Unit on their property located at 426 Kentucky Road PIN#072007755800000. At the time of development permitting, the Applicant requested a modification of the location of the approved stairs and permission to construct a secondary entrance to the structure. Changes in development approvals require additional approval, as stated specifically for Special Use Permits in the North Carolina General Statute 160D-403(d). The Montreat Zoning Ordinance ("Ordinance") dictates how approvals and modifications of those approvals are to be obtained. If the Ordinance does not specify the process, then the original approval process is followed. Section 310.643 of the Ordinance requires strict compliance with approved Special Use Permit plans.

The Ordinance does not grant any powers to the Zoning Administrator to modify approved Special Use Permits at the administrative level. Since the Ordinance does not specify that the Zoning Administrator has this authority, the Zoning Administrator informed the Applicant that any revision to the approved Special Use Permit would have to be approved by the Board of Adjustment. To obtain approval for the proposed revisions, the Applicant would have to either (1) request approval from the Board of Adjustment for the proposed revisions or (2) apply for a text amendment to the Ordinance to allow the Zoning Administrator authority to approve specific revisions.

The North Carolina State Statute allows for the Zoning Administrator to approve minor amendments to Special Use Permits under NCGS 160D-703(b) if the power granted is defined in the ordinance and constrained by clear limitations. The Zoning Administrator is also not permitted to grant changes in use or density at the administrative level as these changes are considered major amendments.

The University of North Carolina Chapel Hill's School of Government provides guidance on allowing minor modifications of development approvals at the administrative level. A link to this document is below. In addition to Special Use Permits, minor administrative modifications are also permitted for conditional zoning districts and development agreements. For the purposes of this text amendment, only minor modifications of Special Use Permits are discussed/reviewed.

https://www.sog.unc.edu/sites/www.sog.unc.edu/files/1_AdministrativeModification_160DGuidanceDoc_6-24-20.pdf

There are several considerations a local government should make when considering allowing the Zoning Administrator to approve modifications to Special Use Permit. The

following are summarized from the above document.

1. **Distinguish between site design modifications and dimensional standard modifications.** There are two distinct types of minor modifications. Site design modifications are changes to design, such as orientation of parking spaces. Under these changes, the approval still meets the underlying zoning requirements. Site design modifications are clearly permitted under NCGS 160D. Dimensional standard modifications are those that change the underlying zoning requirements, such as reducing the number of parking spaces. This is similar to a variance and may require a quasi-judicial examination, which is not under the authority of the Zoning Administrator regardless of what an ordinance says. These types of changes are arguably authorized under general zoning powers and case law, but care must be taken to avoid requiring the Zoning Administrator to make a quasi-judicial examination.
2. **Define minor modification.** Set clear limits on what changes qualify for administrative review. As a general rule, do not include changes in use or density. Be clear about the permissible amount of modification.
3. **Determine qualifying criteria for modifications.** Determine when a minor modification is authorized. Remember that the examination must be administrative (i.e. black and white) not quasi-judicial (i.e. discretionary).
4. **Determine decision-maker.** Determine what official or board is charged with reviewing a request for administrative modification.
5. **Consider impact on major amendments**. Consider whether multiple or sequential minor modifications trigger a major amendment.

The applicant's proposed changes and the existing language in the Ordinance are provided as supplemental attachments to this staff report.

STAFF RESEARCH

The Zoning Administrator reviewed the Unified Development Ordinances of Buncombe County, Asheville, Black Mountain, Woodfin, Weaverville, and Biltmore Forest to examine existing regulations for minor amendments authorized at the administrative level to Special Use Permits. Verbatim excerpts from these ordinances are included at the end of this staff report.

Buncombe County Unified Development Ordinance (Chapter 78)

Buncombe County authorizes the Zoning Administrator to permit minor changes to the location, siting or character of buildings and structures of Special Use Permits. The applicant must demonstrate that these changes are required by engineering or other circumstances not foreseen at the time the final development program was approved. The Zoning Administrator may not permit changes that increase the size of any building or structure by

more than ten percent, nor change the location of any building or structure by more than ten feet in any direction or alter any underlying zoning regulation. There are six specific changes listed that cannot be authorized by the Zoning Administrator. Any changes not permitted to be authorized by the Zoning Administrator must be made by the Board of Adjustment.

City of Asheville Unified Development Ordinance (Chapter 7)

The City of Asheville permits minor modifications to Special Use Permits at the administrative level that do not involve changes in uses permitted or the density of the overall project. It is not clear who at the administrative level makes this decision. Any changes not permitted to be authorized at the administrative level must be made by the Board of Adjustment.

Town of Black Mountain Unified Development Ordinance (Chapter 8)

The Town of Black Mountain authorizes the Zoning Administrator to approve minor modifications to Special Use Permit if the building floor areas and/or structure heights are not increased by more than 20 percent, density is not increased, relocated buildings, roads or uses maintain the same general relationships, landscaping, road, and utility standards, and the amendment is in compliance with the underlying zoning regulations. Any changes not permitted to be authorized by the Zoning Administrator must be made by the Board of Adjustment.

Town of Weaverville Unified Development Ordinance (Chapter 20)

The Town of Weaverville allows the Zoning Administrator to approve minor modifications to Special Use Permits if the modification does not involve a change in uses permitted or the density of overall development permitted and does not increase the impacts generated by the development on traffic, stormwater runoff, or similar impacts beyond what was projected for the original development approval. The change must also continue to meet all other ordinance requirements. Modifications to site plans must comply with the underlying zoning regulations and are limited to minor changes such as a minor adjustment to road configuration or internal circulation, a minor adjustment to building locations, or a minor adjustment to utility alignment.

Town of Woodfin Unified Development Ordinance (Chapter 54)

The Town of Weaverville permits the Planning Director to approve minor modifications to Special Use Permits. These modifications cannot involve a change in uses permitted or the density of overall development permitted and cannot increase the impacts generated by the development on traffic, stormwater runoff, or similar impacts beyond what was projected for the original development approval. The change must also continue to meet all other ordinance requirements. Modifications to site plans must comply with the underlying zoning

regulations and are limited to minor changes such as a minor adjustment to road configuration or internal circulation, a minor adjustment to building locations, or a minor adjustment to utility alignment. The Planning Director may also permit dimensional standard modifications to adjust parking requirements up to the greater of five spaces or 10 percent and/or to setback requirements up to greater of 24 inches or ten percent. Granting these modifications are based on evidence from the applicant that the modification is needed to address a site characteristic or technical design consideration not known at the time of initial approval.

Town of Biltmore Forest Unified Development Ordinance (Chapter 153)

The Town of Biltmore Forest does not allow minor modifications of Special Use Permits at the administrative level.

PLANNING AND ZONING COMMISSION RECOMMENDATION

Section 309.23 of the MZO requires the Planning and Zoning Commission to provide a recommendation to the Board of Commissioners that addresses consistency with the Comprehensive Plan and other matters as deemed appropriate. A link to the Town of Montreat's Comprehensive Plan is provided below.

Montreat Tomorrow Comprehensive Plan

Example Language:

The proposed text amendment [is/is not] consistent with Montreat Tomorrow because…

- [identify policies in Montreat Tomorrow which the amendment is/is not consistent with]
- [identify policies in Montreat Tomorrow which the amendment advances/hinders]

For more information on consistency statements, please review "Plan Consistency and Reasonableness Statements" Guidance prepared by the University of North Carolina – Chapel Hill's School of Government.

STAFF RESEARCH ORDINANCE EXCERPTS

Buncombe County Unified Development Ordinance (Chapter 78)

Sec. 78-677.

(j) *Changes; limitations.* Minor changes in the location, siting or character of buildings and structures may be authorized by the zoning administrator, if required by engineering or other circumstances not foreseen at the time the final development program was approved; provided, however, that no change authorized by the zoning administrator under this section may increase the size of any

building or structure by more than ten percent, nor change the location of any building or structure by more than ten feet in any direction, nor make any changes beyond the minimum or maximum requirements set forth in this article. All other changes, including changes in the site plan and in the development schedule, must be submitted to the board of adjustment. In no case shall the following changes be made without resubmission of the development plan according to the procedures in this section:

(1) A change in the use or character of the development.

(2) An increase in overall density.

(3) An increase in intensity of use.

(4) Alteration of the traffic circulation system.

(5) A reduction in approved open space.

(6) A reduction of off-street parking and loading space.

City of Asheville Unified Development Ordinance (Chapter 7)

Sec 7-5-5

(k) *Minor Modifications.* Minor modifications to a special use permit that do not involve a change in uses permitted or the density of overall development permitted may be reviewed and approved administratively. Any other modifications or revocation of a special use permit shall follow the same process for the granting of the original special use permit.

Town of Black Mountain Unified Development Ordinance (Chapter 8)

Sec 7.2.10

A. The owner of property that is subject to an approved special use permit may apply for a modification of the special use permit by following the same procedure as if applying for a new special use permit. Applications for a modification must include a new site plan that identifies the proposed changes. Evidence presented at the hearing on the proposed modification will be limited to the effect of the proposal on the original special use permit, any plans or conditions that were a part of the original special use permit, and the standards and requirements of the ordinance under which the original special use permit approved.

B. Changes to the plans and conditions of development that were the basis of the approval of the special use permit require board of adjustment approval; provided, however, that certain minor changes may be approved by the zoning administrator without board of adjustment approval, if:

1. Building floor areas are not changed by more than 20 percent;

2. Building or structure heights are not increased by more than 20 percent;

3. Density is not increased;

4. Relocated buildings, roads or uses maintain the same general relationships, landscaping, road, and utility standards; and

5. The amendment preserves compliance with any specific requirement of this chapter and the zoning district requirements at the time of the amendment request.

If the zoning administrator determines that a proposal is not a minor change, the application for changes shall be forwarded to the board of adjustment for consideration.

Town of Weaverville Unified Development Ordinance (Chapter 20)

Sec 20-1303

After a development approval has been issued, no deviations from the terms of the application or the development approval shall be made until written approval of proposed changes or deviations has been obtained as set out herein.

(a) *Major amendments*. Except as allowed under Minor Modifications below, all changes to approved conditional districts, special use permits, subdivision plats, and/or other development approvals, are major amendments and shall follow the same process applicable for the original approval.

(b) *Changes to individual parcels within a conditional district or special use permit*. For a conditional district or special use permit applicable to multiple parcels, the owners of individual parcels may apply for minor modification or major amendment so long as the change would not result in other properties failing to meet the terms of the conditions. Any approved change shall only be applicable to those properties whose owners petitioned for the change.

(c) *Minor modifications*. The subdivision administrator is authorized to review and approve administratively a minor modification to an approved subdivision plat, and the zoning administrator is authorized to reviewed and approve administratively a minor modification to an approved conditional district, special use permit or any other development approval. All minor modifications are subject to the following limitations:

i. *General limitations*. The modification:

1. Does not involve a change in uses permitted or the density of overall development permitted;

2. Does not increase the impacts generated by the development on traffic, stormwater runoff, or similar impacts beyond what was projected for the original development approval; and

3. Meets all other ordinance requirements.

ii. *Site design*. Site design minor modifications are limited to adjustments to the terms or design of an approved development plan or plat, including a site plan attached as a condition to a conditional zoning district or special use permit. In addition to the general limitations for minor modifications, a site design minor modification must:

1. Comply with underlying zoning standards and other applicable conditions of approval;

2. Be limited to minor changes such as, without limitation, a minor adjustment to road configuration or internal circulation, a minor adjustment to building locations, or a minor adjustment to utility alignment.

(d) *Appeals and variances*. A decision on minor modifications is an administrative decision and may be appealed to the board of adjustment. An application for a minor modification does not preclude an applicant from seeking a variance from the board of adjustment.

(e) *Notice to governing board.* Staff is required to notify the governing board of any minor modifications to conditional districts that have been administratively approved or denied.

Sec 20-3204

(l) *Modifications.* Minor modifications and major amendments to approved special use permits shall be in accordance with Code section 20-1303.

Town of Woodfin Unified Development Ordinance (Chapter 54)

Sec. 54-319

a) Minor modifications. The planning director is authorized to review and approve administratively a minor modification to subsequent plans and permits for a development within a conditional zoning district or approved by special use permit.

(1) *General limitations.* The minor modification shall not involve a change in uses permitted or the density of the overall development or increase the impacts generated by the development on traffic, stormwater runoff, or similar impacts beyond what was projected for the original development. The modification shall meet all other ordinance requirements.

(2) *Site design.* Site design minor modifications are limited adjustments to the terms or design of an approved development plan or plat, including a site plan attached as a condition to a conditional zoning or special use permit. In addition to the general limitations for minor modifications, a site design minor modification must:

a. Comply with underlying zoning standards and other applicable conditions of the approval;

b. Be limited to a minor change such as, without limitation, a minor adjustment to road configuration or internal circulation, a minor adjustment to building location, or a minor adjustment to utility alignment.

(3) *Dimensional standards.* Dimensional standard minor modifications are adjustments to the dimensional standards of the zoning ordinance. Dimensional standards may only be modified upon a finding by the planning director, based on evidence from the permit holder, that the modification is needed to address a site characteristic or technical design consideration not

known at the time of initial approval. In addition to the general limitations for minor modifications, dimensional standard minor modifications are limited to:

a. An adjustment to parking requirements up to the greater of five spaces or 10 percent.

b. An adjustment to setback requirements up to greater of 24 inches or ten percent.

(4) *Appeals and variances.* A decision on a minor modification may be appealed to the board of adjustment as an administrative determination. An application for a minor modification does not preclude an applicant from seeking a variance from the board of adjustment.