

**MONTREAT CODE OF GENERAL ORDINANCES**

**CHAPTER K -- ENVIRONMENT**

**ARTICLE I: FLOOD DAMAGE PREVENTION ORDINANCE**

*(Revised 11/30/09)*

**ARTICLE 1. STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND OBJECTIVES.**

**SECTION A. STATUTORY AUTHORIZATION.**

That pursuant to authority granted by the Legislature of the State of North Carolina as contained in Part 6, Article 21 of Chapter 143; Parts 3, 5, and 8 of Article 19 of Chapter 160A; and Article 8 of Chapter 160A of the North Carolina General Statutes, delegated to local governmental units the responsibility to adopt regulations designed to promote the public health, safety, and general welfare.

Therefore, the Board of Commissioners of the Town of Montreat, North Carolina, does ordain as follows:

**SECTION B. FINDINGS OF FACT.**

- (1) The flood prone areas within the jurisdiction of the Town of Montreat are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
- (2) These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities and by the occupancy in flood prone areas of uses vulnerable to floods or hazardous to other lands which are inadequately elevated, floodproofed, or otherwise unprotected from flood damages.

**SECTION C. STATEMENT OF PURPOSE.**

It is the purpose of this ordinance to promote public health, safety, and general welfare and to minimize public and private losses due to flood conditions within flood prone areas by provisions designed to:

- (1) restrict or prohibit uses that are dangerous to health, safety, and property due to water or erosion hazards or that result in damaging increases in erosion, flood heights or velocities;

- (2) require that uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction;
- (3) control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters;
- (4) control filling, grading, dredging, and all other development that may increase erosion or flood damage; and
- (5) prevent or regulate the construction of flood barriers that will unnaturally divert flood waters or which may increase flood hazards to other lands.

**SECTION D.           OBJECTIVES.**

The objectives of this ordinance are to:

- (1) protect human life, safety, and health;
- (2) minimize expenditure of public money for costly flood control projects;
- (3) minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) minimize prolonged business losses and interruptions;
- (5) minimize damage to public facilities and utilities (i.e. water and gas mains, electric, telephone, cable and sewer lines, streets, and bridges) that are located in flood prone areas;
- (6) help maintain a stable tax base by providing for the sound use and development of flood prone areas; and
- (7) ensure that potential buyers are aware that property is in a Special Flood Hazard Area.

**ARTICLE 2.           DEFINITIONS.**

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

“Accessory Structure (Appurtenant Structure)” means a structure located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Garages, carports and storage sheds are common urban accessory structures. Pole barns, hay sheds and the like qualify as accessory structures on farms, and may or may not be located on the same parcel as the farm dwelling or shop building.

“Addition (to an existing building)” means an extension or increase in the floor area or height of a building or structure.

“Appeal” means a request for a review of the Floodplain Administrator's interpretation of any provision of this ordinance.

“Area of Special Flood Hazard” see “Special Flood Hazard Area (SFHA)”.

“Basement” means any area of the building having its floor subgrade (below ground level) on all sides.

“Base Flood” means the flood having a one (1) percent chance of being equaled or exceeded in any given year.

“Base Flood Elevation (BFE)” means a determination of the water surface elevations of the base flood as published in the Flood Insurance Study. When the BFE has not been provided in a “Special Flood Hazard Area”, it may be obtained from engineering studies available from a Federal, State, or other source using FEMA approved engineering methodologies. This elevation, when combined with the “Freeboard”, establishes the “Regulatory Flood Protection Elevation”.

“Building” see “Structure”.

“Chemical Storage Facility” means a building, portion of a building, or exterior area adjacent to a building used for the storage of any chemical or chemically reactive products.

“Development” means any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

“Disposal” means, as defined in NCGS 130A-290(a)(6), the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

“Elevated Building” means a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

“Encroachment” means the advance or infringement of uses, fill, excavation, buildings, structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

“Existing Manufactured Home Park or Manufactured Home Subdivision” means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) was

completed before the initial effective date of the floodplain management regulations adopted by the community.

“Flood” or “Flooding” means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) the overflow of inland or tidal waters; and/or
- (2) the unusual and rapid accumulation of runoff of surface waters from any source.

“Flood Insurance” means the insurance coverage provided under the National Flood Insurance Program.

“Flood Insurance Rate Map (FIRM)” means an official map of a community, issued by the Federal Emergency Management Agency, on which both the Special Flood Hazard Areas and the risk premium zones applicable to the community are delineated.

“Flood Insurance Study (FIS)” means an examination, evaluation, and determination of flood hazards, corresponding water surface elevations (if appropriate), flood hazard risk zones, and other flood data in a community issued by the Federal Emergency Management Agency. The Flood Insurance Study report includes Flood Insurance Rate Maps (FIRMs) and Flood Boundary and Floodway Maps (FBFMs), if published.

“Floodplain” means any land area susceptible to being inundated by water from any source.

“Floodplain Administrator” is the individual appointed to administer and enforce the floodplain management regulations.

“Floodplain Development Permit” means any type of permit that is required in conformance with the provisions of this ordinance, prior to the commencement of any development activity.

“Floodplain Management” means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including, but not limited to, emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

“Floodplain Management Regulations” means this ordinance and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances, and other applications of police power. This term describes Federal, State or local regulations, in any combination thereof, which provide standards for preventing and reducing flood loss and damage.

“Floodproofing” means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures, and their contents.

“Floodway” means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

“Flood Zone” means a geographical area shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map that reflects the severity or type of flooding in the area.

“Freeboard” means the height added to the Base Flood Elevation (BFE) to account for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, blockage of bridge openings, and the hydrological effect of urbanization of the watershed. The Base Flood Elevation plus the freeboard establishes the “Regulatory Flood Protection Elevation”.

“Functionally Dependent Facility” means a facility which cannot be used for its intended purpose unless it is located in close proximity to water, limited to a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, or ship repair. The term does not include long-term storage, manufacture, sales, or service facilities.

“Hazardous Waste Management Facility” means a facility, as defined in NCGS 130A, Article 9, for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste.

“Highest Adjacent Grade (HAG)” means the highest natural elevation of the ground surface, prior to construction, immediately next to the proposed walls of the structure.

“Historic Structure” means any structure that is:

- (a) listed individually in the National Register of Historic Places (a listing maintained by the US Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National Register;
- (b) certified or preliminarily determined by the Secretary of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (c) individually listed on a local inventory of historic landmarks in communities with a “Certified Local Government (CLG) Program”; or
- (d) certified as contributing to the historical significance of a historic district designated by a community with a “Certified Local Government (CLG) Program”.

Certified Local Government (CLG) Programs are approved by the US Department of the Interior in cooperation with the North Carolina Department of Cultural Resources through the State Historic Preservation Officer as having met the requirements of the National Historic Preservation Act of 1966 as amended in 1980.

“Lowest Adjacent Grade (LAG)” means the elevation of the ground, sidewalk or patio slab immediately next to the building, or deck support, after completion of the building.

“Lowest Floor” means lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or limited storage in an area other than a basement area is not considered a building's lowest floor, provided that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

“Manufactured Home” means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term “manufactured home” does not include a “recreational vehicle”.

“Manufactured Home Park or Subdivision” means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

“Market Value” means the building value, not including the land value and that of any accessory structures or other improvements on the lot. Market value may be established by independent certified appraisal; replacement cost depreciated for age of building and quality of construction (Actual Cash Value); or adjusted tax assessed values.

“Mean Sea Level” means, for purposes of this ordinance, the National Geodetic Vertical Datum (NGVD) as corrected in 1929, the North American Vertical Datum (NAVD) as corrected in 1988, or other vertical control datum used as a reference for establishing varying elevations within the floodplain, to which Base Flood Elevations (BFEs) shown on a FIRM are referenced. Refer to each FIRM panel to determine datum used.

“New Construction” means structures for which the “start of construction” commenced on or after the effective date of the initial floodplain management regulations and includes any subsequent improvements to such structures.

“Non-Encroachment Area” means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot as designated in the Flood Insurance Study report.

“Person” means an individual, corporation, business trust, estate, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency or instrumentality, public corporation or any other legal or commercial entity.

“Post-FIRM” means construction or other development for which the “start of construction” occurred on or after the effective date of the initial Flood Insurance Rate Map.

“Pre-FIRM” means construction or other development for which the “start of construction” occurred before the effective date of the initial Flood Insurance Rate Map.

“Principally Above Ground” means that at least 51% of the actual cash value of the structure is above ground.

“Public Safety” and/or “Nuisance” means anything which is injurious to the safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

“Recreational Vehicle (RV)” means a vehicle, which is:

- (a) built on a single chassis;
- (b) 400 square feet or less when measured at the largest horizontal projection;
- (c) designed to be self-propelled or permanently towable by a light duty truck; and
- (d) designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use.

“Reference Level” is the bottom of the lowest horizontal structural member of the lowest floor for structures within all Special Flood Hazard Areas. Designated as Zone A1-A30, AE, A, A99 or AO

“Regulatory Flood Protection Elevation” means the “Base Flood Elevation” plus the “Freeboard”. In “Special Flood Hazard Areas” where Base Flood Elevations (BFEs) have been determined, this elevation shall be the BFE plus two (2) feet of freeboard. In “Special Flood Hazard Areas” where no BFE has been established, this elevation shall be at least two (2) feet above the highest adjacent grade.

“Remedy a Violation” means to bring the structure or other development into compliance with State and community floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the ordinance or otherwise deterring future similar violations, or reducing Federal financial exposure with regard to the structure or other development.

“Riverine” means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

“Salvage Yard” means any non-residential property used for the storage, collection, and/or recycling of any type of equipment, and including but not limited to vehicles, appliances and related machinery.

“Solid Waste Disposal Facility” means any facility involved in the disposal of solid waste, as defined in NCGS 130A-290(a)(35).

“Solid Waste Disposal Site” means, as defined in NCGS 130A-290(a)(36), any place at which solid wastes are disposed of by incineration, sanitary landfill, or any other method.

“Special Flood Hazard Area (SFHA)” means the land in the floodplain subject to a one percent (1%) or greater chance of being flooded in any given year as determined in Article 3, Section B of this ordinance.

“Start of Construction” includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building.

“Structure” means a walled and roofed building, a manufactured home, or a gas, liquid, or liquefied gas storage tank that is principally above ground.

“Substantial Damage” means damage of any origin sustained by a structure during any one-year period whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. See definition of “substantial improvement”. Substantial damage also means flood-related damage sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred

“Substantial Improvement” means any combination of repairs, reconstruction, rehabilitation, addition, or other improvement of a structure, taking place during any one-year period for which the cost equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred “substantial damage”, regardless of the actual repair work performed. The term does not, however, include either:

- (a) any correction of existing violations of State or community health, sanitary, or safety code specifications which have been identified by the community code enforcement official and which are the minimum necessary to assure safe living conditions; or
- (b) any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

“Variance” is a grant of relief from the requirements of this ordinance.

“Violation” means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Articles 4 and 5 is presumed to be in violation until such time as that documentation is provided.

“Watercourse” means a lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

“Water Surface Elevation (WSE)” means the height, in relation to mean sea level, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

“Zone A” designates the flood hazard area without base flood elevations established.

“Zone AE” is the 1% annual chance (100-year) floodplain with base flood elevations established.

“Zone X- Shaded” is the 0.2% annual chance (500-year) floodplain.

“Zone X- Unshaded” designates areas outside the 500-year floodplain.

### **ARTICLE 3.           GENERAL PROVISIONS.**

#### **SECTION A.           LANDS TO WHICH THIS ORDINANCE APPLIES.**

This ordinance shall apply to all Special Flood Hazard Areas within the jurisdiction of the Town of Montreat and the unincorporated areas of Buncombe County located within the extraterritorial jurisdiction of Montreat.

#### **SECTION B.           BASIS FOR ESTABLISHING THE SPECIAL FLOOD HAZARD AREAS.**

The Special Flood Hazard Areas are those identified under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its Flood Insurance Study (FIS) and its accompanying Flood Insurance Rate Maps (FIRM), for Buncombe County dated January 6, 2010, which are adopted by reference and declared to be a part of this ordinance.

#### **SECTION C.           ESTABLISHMENT OF FLOODPLAIN DEVELOPMENT PERMIT.**

A Floodplain Development Permit shall be required in conformance with the provisions of this ordinance prior to the commencement of any development activities within Special Flood Hazard Areas determined in accordance with the provisions of Article 3, Section B of this ordinance.

#### **SECTION D.           COMPLIANCE.**

No structure or land shall hereafter be located, extended, converted, altered, or developed in any way without full compliance with the terms of this ordinance and other applicable regulations.

**SECTION E. ABROGATION AND GREATER RESTRICTIONS.**

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

**SECTION F. INTERPRETATION.**

In the interpretation and application of this ordinance, all provisions shall be:

- (a) considered as minimum requirements;
- (b) liberally construed in favor of the governing body; and
- (c) deemed neither to limit nor repeal any other powers granted under State statutes.

**SECTION G. WARNING AND DISCLAIMER OF LIABILITY.**

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur. Actual flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the Special Flood Hazard Areas or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the Town of Montreat or by any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

**SECTION H. PENALTIES FOR VIOLATION.**

- (1) Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$50.00 or imprisoned for not more than thirty (30) days, or both. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the Town of Montreat from taking such other lawful action as is necessary to prevent or remedy any violation.
- (2) In addition to revoking or refusing to issue a Floodplain Development Permit, the Floodplain Administrator or other authorized agent may refuse or cause to be refused a certificate of occupancy for any building or other improvements constructed or being constructed on the site in question, or cause the Town permitting office to refuse to issue any permit that has been applied for, or cause the Town permitting office to freeze (or suspend) active permits and inspections until the applicant has taken the corrective procedures set forth in the notice and cured the violations described therein.
- (3) Failure to remove any artificial obstruction or enlargement or replacement thereof, that violates this Ordinance or the provision of any permit issued under the authority of this Ordinance may subject the person in violation of this Ordinance to a fine of not more than

\$5,000 per day, and such fine shall constitute a separate violation of this Ordinance for each day that the failure continues after written notice from the Town Board of Commissioners. Any fine imposed hereunder shall be a civil penalty which may be recovered by the Town in a civil action in the nature of a debt.

- (4) In addition to or in lieu of other remedies, the Town Board of Commissioners may, by and through its Floodplain Administrator or other authorized agent, institute any appropriate action or proceeding to restrain or prevent any violation of this Ordinance or of the provisions of any permit issued under the authority of this Ordinance, or to require any person, firm or corporation that has committed a violation to remove a violating obstruction or restore the conditions existing before the placement of the obstruction by any manner or means available at law or in equity.

**ARTICLE 4.           ADMINISTRATION.**

**SECTION A.           DESIGNATION OF FLOODPLAIN ADMINISTRATOR.**

The Code Administrator, hereinafter referred to as the “Floodplain Administrator”, is hereby appointed to administer and implement the provisions of this ordinance.

**SECTION B.           FLOODPLAIN DEVELOPMENT APPLICATION, PERMIT AND CERTIFICATION REQUIREMENTS.**

- (1) **Application Requirements.** Application for a Floodplain Development Permit shall be made to the Floodplain Administrator prior to any development activities located within Special Flood Hazard Areas. The following items shall be presented to the Floodplain Administrator to apply for a floodplain development permit:
- (a) A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development:
    - (i) the nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed structures, utility systems, grading/pavement areas, fill materials, storage areas, drainage facilities, and other development;
    - (ii) the boundary of the Special Flood Hazard Area as delineated on the FIRM or other flood map as determined in Article 3, Section B, or a statement that the entire lot is within the Special Flood Hazard Area;
    - (iii) flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map as determined in Article 3, Section B;
    - (iv) the boundary of the floodway(s) or non-encroachment area(s) as determined in Article 3, Section B;

- (v) the Base Flood Elevation (BFE) where provided as set forth in Article 3, Section B; Article 4, Section C; or Article 5, Section D;
  - (vi) the old and new location of any watercourse that will be altered or relocated as a result of proposed development;
- (b) Proposed elevation, and method thereof, of all development within a Special Flood Hazard Area including but not limited to:
    - (i) Elevation in relation to mean sea level of the proposed reference level (including basement) of all structures;
    - (ii) Elevation in relation to mean sea level to which any non-residential structure in Zone AE, A or AO will be flood-proofed; and
    - (iii) Elevation in relation to mean sea level to which any proposed utility systems will be elevated or floodproofed;
  - (c) If floodproofing, a Floodproofing Certificate (FEMA Form 81-65) with supporting data and an operational plan that includes, but is not limited to, installation, exercise, and maintenance of floodproofing measures.
  - (d) A Foundation Plan, drawn to scale, which shall include details of the proposed foundation system to ensure all provisions of this ordinance are met. These details include but are not limited to:
    - (i) The proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/posts/piers/piles/shear walls); and
    - (ii) Openings to facilitate automatic equalization of hydrostatic flood forces on walls in accordance with Article 5, Section B(4)(c) when solid foundation perimeter walls are used in Zones A, AO, AE, and A1-30;
  - (e) Usage details of any enclosed areas below the lowest floor.
  - (f) Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage;
  - (g) Certification that all other Local, State and Federal permits required prior to floodplain development permit issuance have been received.

- (h) Documentation for placement of Recreational Vehicles and/or Temporary Structures, when applicable, to ensure that the provisions of Article 5, Section B, subsections (6) and (7) of this ordinance are met.
- (i) A description of proposed watercourse alteration or relocation, when applicable, including an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map (if not shown on plot plan) showing the location of the proposed watercourse alteration or relocation.

(2) **Permit Requirements.** The Floodplain Development Permit shall include, but not be limited to:

- (a) A description of the development to be permitted under the floodplain development permit.
- (b) The Special Flood Hazard Area determination for the proposed development per available data specified in Article 3, Section B.
- (c) The regulatory flood protection elevation required for the reference level and all attendant utilities.
- (d) The regulatory flood protection elevation required for the protection of all public utilities.
- (e) All certification submittal requirements with timelines.
- (f) A statement that no fill material or other development shall encroach into the floodway or non-encroachment area of any watercourse, if applicable.
- (g) The flood openings requirements, if in Zones A, AO, AE or A1-30.
- (h) Limitations of below BFE enclosure uses, if applicable. (i.e., parking, building access and limited storage only).

(3) **Certification Requirements.**

- (a) Elevation Certificates
  - (i) An Elevation Certificate (FEMA Form 81-31) is recommended prior to the actual start of any new construction. It shall be the duty of the permit holder to have established an elevation reference level, prior to construction. The Floodplain Administrator can review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder prior to the beginning of construction. Failure to submit the certification or failure to make required corrections shall be cause to deny

a floodplain development permit..

- (ii) A final as-built Elevation Certificate (FEMA Form 81-31) is required after construction is completed and prior to Certificate of Compliance/Occupancy issuance. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of final as-built construction of the elevation of the reference level and all attendant utilities. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to Certificate of Compliance/Occupancy issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make required corrections shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.
  
- (b) Floodproofing Certificate. If non-residential floodproofing is used to meet the regulatory flood protection elevation requirements, a Floodproofing Certificate (FEMA Form 81-65), with supporting data, an operational plan, and an inspection and maintenance plan are required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to mean sea level. Floodproofing certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The Floodplain Administrator shall review the certificate data, the operational plan, and the inspection and maintenance plan. Deficiencies detected by such review shall be corrected by the applicant prior to permit approval. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit. Failure to construct in accordance with the certified design shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.
  
- (c) If a manufactured home is placed within Zone A, AO, AE, or A1-30 and the elevation of the chassis is more than 36 inches in height above grade, an engineered foundation certification is required in accordance with the provisions of Article 5, Section B(3)(b).
  
- (d) If a watercourse is to be altered or relocated, a description of the extent of watercourse alteration or relocation; a professional engineer's certified report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation shall all be submitted by the permit applicant prior to issuance of a floodplain development permit.

- (e) Certification Exemptions. The following structures, if located within Zone A, AO, AE or A1-30, are exempt from the elevation/floodproofing certification requirements specified in items (a) and (b) of this subsection :
  - (i) Recreational Vehicles meeting requirements of Article 5, Section B(6)(a);
  - (ii) Temporary Structures meeting requirements of Article 5, Section B(7);  
and
  - (iii) Accessory Structures less than 150 square feet meeting requirements of Article 5, Section B(8).

**SECTION C. DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR.**

The Floodplain Administrator shall perform , but not be limited to, the following duties:

- (1) Review all floodplain development applications and issue permits for all proposed development within Special Flood Hazard Areas to assure that the requirements of this ordinance have been satisfied.
- (2) Review all proposed development within Special Flood Hazard Areas to assure that all necessary Local, State and Federal permits have been received.
- (3) Notify adjacent communities and the North Carolina Department of Crime Control and Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA).
- (4) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is maintained.
- (5) Prevent encroachments into floodways and non-encroachment areas unless the certification and flood hazard reduction provisions of Article 5, Section F are met.
- (6) Obtain actual elevation (in relation to mean sea level) of the reference level (including basement) of all attendant utilities of all new and substantially improved structures, in accordance with Article 4, Section B(3).
- (7) Obtain actual elevation (in relation to mean sea level) to which all new and substantially improved structures and utilities have been floodproofed, in accordance with the provisions of Article 4, Section B(3).

- (8) Obtain actual elevation (in relation to mean sea level) of all public utilities in accordance with the provisions of Article 4, Section B(3).
- (9) When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with the provisions of Article 4, Section B(3) and Article 5, Section B(2).
- (10) Where interpretation is needed as to the exact location of boundaries of the Special Flood Hazard Areas, floodways, or non-encroachment areas, (for example where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this article.
- (11) When Base Flood Elevation (BFE) data has not been provided in accordance with Article 3, Section B, obtain, review, and reasonably utilize any Base Flood Elevation (BFE) data, along with floodway data or non-encroachment area data available from a Federal, State, or other source, including data developed pursuant to Article 5, Section D(2)(b), in order to administer the provisions of this ordinance.
- (12) When Base Flood Elevation (BFE) data is provided but no floodway or non-encroachment area data has been provided in accordance with Article 3, Section B, obtain, review, and reasonably utilize any floodway data or non-encroachment area data available from a Federal, State, or other source in order to administer the provisions of this ordinance.
- (13) Permanently maintain all records that pertain to the administration of this ordinance and make these records available for public inspection, recognizing that such information may be subject to the Privacy Act of 1974, as amended.
- (14) Make on-site inspections of work in progress. As the work pursuant to a floodplain development permit progresses, the floodplain administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local ordinance and the terms of the permit. In exercising this power, the floodplain administrator has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the community at any reasonable hour for the purposes of inspection or other enforcement action.
- (15) Issue stop-work orders as required. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this ordinance, the Floodplain Administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing or in charge of the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor.

- (16) Revoke floodplain development permits as required. The Floodplain Administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, and specifications; for refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing the permit. Any floodplain development permit mistakenly issued in violation of an applicable State or local law may also be revoked.
- (17) May refuse or cause to be refused a certificate of occupancy for any building or other improvements constructed or being constructed on the site in question, or cause the Town permitting office to refuse to issue any permit that has been applied for, or cause the Town permitting office to freeze (or suspend) active permits and inspections.
- (18) Make periodic inspections throughout the Special Flood Hazard Areas within the jurisdiction of the community. The Floodplain Administrator and each member of his or her inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.
- (19) Follow through with corrective procedures of Article 4, Section D.
- (20) Review, provide input, and make recommendations for variance requests.
- (21) Maintain a current map repository to include, but not limited to, the FIS Report, FIRM and other official flood maps and studies adopted in accordance with Article 3, Section B of this ordinance, including any revisions thereto including Letters of Map Change, issued by FEMA. Notify State and FEMA of mapping needs.
- (22) Coordinate revisions to FIS reports and FIRMs, including Letters of Map Revision Based on Fill (LOMR-F) and Letters of Map Revision (LOMR).
- (23) Apply and enforce any and all provisions of this Ordinance. In determining the amount of any penalty ordered under authority of this Ordinance the Floodplain Administrator shall give due consideration to the appropriateness of the penalty with respect to the size of the business of the person being charged, the gravity of the violation, the good faith of the person, the record of previous violations, and, in general, the facts and circumstances surrounding the violation.

#### **SECTION D. CORRECTIVE PROCEDURES.**

- (1) Violations to be Corrected: When the Floodplain Administrator finds violations of applicable State and local laws, it shall be his or her duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law cited in such notification. .

- (2) Actions in Event of Failure to Take Corrective Action: If the owner of a building or property shall fail to take prompt corrective action, the Floodplain Administrator shall give the owner written notice, by certified or registered mail to the owner's last known address or by personal service, stating:
- (a) that the building or property is in violation of the floodplain management regulations;
  - (b) that a hearing will be held before the floodplain administrator at a designated place and time, not later than ten (10) days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and
  - (c) that following the hearing, the Floodplain Administrator may issue an order affirming, modifying or rescinding the original finding or may enter such other finding or order as the Floodplain Administrator may deem just and proper consistent with the provisions of this Ordinance including, but not limited to order to alter, vacate, or demolish the building; or to remove fill as applicable.
- (3) Order to Take Corrective Action: If, upon a hearing held pursuant to the notice prescribed above, the Floodplain Administrator shall find that the building or development is in violation of the Flood Damage Prevention Ordinance, He/she shall issue an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than sixty (60) calendar days, nor more than one-hundred eighty (180) calendar days. Where the Floodplain Administrator finds that there is imminent danger to life or other property, they may order that corrective action be taken in such lesser period as may be feasible.
- (4) Appeal: Any owner who has received an order to take corrective action may appeal the order to the Board of Adjustment by giving notice of appeal in writing to the Floodplain Administrator within ten (10) days following issuance of the final order. In the absence of an appeal, the order of the Floodplain Administrator shall be final. The Board of Adjustment shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.

Any order, requirement, decision, or determination made by the Floodplain Administrator may be appealed to the Board of Adjustment pursuant to the procedure found in Section F. Appeals below.

- (5) Failure to Comply with Order: If the owner of a building or property fails to comply with an order to take corrective action for which no appeal has been made or fails to comply with an order of the governing body following an appeal, the owner shall be guilty of a misdemeanor and shall be punished at the discretion of the court.

**SECTION E.                    VARIANCE PROCEDURES.**

- (1) The Board of Adjustment as established by the Town of Montreat, hereinafter referred to as the “appeal board”, shall hear and decide requests for variances from the requirements of this ordinance.
- (2) Any person aggrieved by the decision of the appeal board may appeal such decision to the Court, as provided in Chapter 7A of the North Carolina General Statutes.



(3) Variances may be issued for:

- (a) the repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and that the variance is the minimum necessary to preserve the historic character and design of the structure;
  - (b) functionally dependent facilities if determined to meet the definition as stated in Article 2 of this ordinance, provided provisions of Article 4, Section E(9)(b), (c), and (e) have been satisfied, and such facilities are protected by methods that minimize flood damages during the base flood and create no additional threats to public safety; or
  - (c) any other type of development, provided it meets the requirements of this Section.
- (4) In passing upon variances, the appeal board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and:
- (a) the danger that materials may be swept onto other lands to the injury of others;
  - (b) the danger to life and property due to flooding or erosion damage;
  - (c) the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  - (d) the importance of the services provided by the proposed facility to the community;
  - (e) the necessity to the facility of a waterfront location as defined under Article 2 of this ordinance as a functionally dependent facility, where applicable;
  - (f) the availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
  - (g) the compatibility of the proposed use with existing and anticipated development;

- (h) the relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
  - (i) the safety of access to the property in times of flood for ordinary and emergency vehicles;
  - (j) the expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
  - (k) the costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.
- (5) A written report addressing each of the above factors shall be submitted with the application for a variance.
- (6) Upon consideration of the factors listed above and the purposes of this ordinance, the appeal board may attach such conditions to the granting of variances as it deems necessary to further the purposes and objectives of this ordinance.
- (7) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the Base Flood Elevation (BFE) and the elevation to which the structure is to be built and that such construction below the Base Flood Elevation increases risks to life and property, and that the issuance of a variance to construct a structure below the Base Flood Elevation will result in increased premium rates for flood insurance up to \$25 per \$100 of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their issuance.
- (8) The Floodplain Administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the State of North Carolina upon request.
- (9) Conditions for Variances:
- (a) Variances shall not be issued when the variance will make the structure in violation of other Federal, State, or local laws, regulations, or ordinances.
  - (b) Variances shall not be issued within any designated floodway or non-encroachment area if the variance would result in any increase in flood levels during the base flood discharge.
  - (c) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
  - (d) Variances shall only be issued prior to development permit approval.

- (e) Variances shall only be issued upon:
  - (i) a showing of good and sufficient cause;
  - (ii) a determination that failure to grant the variance would result in exceptional hardship; and
  - (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- (10) A variance may be issued for solid waste disposal facilities or sites, hazardous waste management facilities, salvage yards, and chemical storage facilities that are located in Special Flood Hazard Areas provided that all of the following conditions are met:
  - (a) The use serves a critical need in the community.
  - (b) No feasible location exists for the use outside the Special Flood Hazard Area.
  - (c) The reference level of any structure is elevated or floodproofed to at least the regulatory flood protection elevation.
  - (d) The use complies with all other applicable Federal, State and local laws.
  - (e) **The** Town of Montreat has notified the Secretary of the North Carolina Department of Crime Control and Public Safety of its intention to grant a variance at least thirty (30) calendar days prior to granting the variance.

## **SECTION F. APPEALS**

- (a) *Types of appeals.* The Board of Adjustment **shall** hear and decide all appeals from any order, requirement, decision, or determination made by the Floodplain Administrator. In deciding appeals, it may hear both those based upon an allegedly improper or erroneous interpretation of this Ordinance and those based upon alleged hardship resulting from strict interpretation of this Ordinance.
- (b) *Procedure for filing appeals.* No appeal shall be heard by the Board of Adjustment unless notice thereof is filed within 30 days after the interested party receives notice of the order, requirement, decision or determination by the Floodplain Administrator. The applicant must file his application for a hearing with the Floodplain Administrator, who shall act as clerk for the Board of Adjustment in receiving this notice. All applications shall be made upon the form specified for that purpose, and all information required thereon shall be complete before an appeal shall be considered as having been filed.

(c) *Hearings.* Hearings shall be conducted as follows:

- (1) *Time.* After receipt of notice of appeal, the board chairperson shall schedule the time for a hearing, which shall be at a regular or special meeting within 31 days from the filing of such notice of appeal.
- (2) *Notice of hearing.* The Board of Adjustment shall mail notices of the hearing to the affected parties to the action appealed from, and to such other persons as the Floodplain Administrator shall direct, at least five days prior to the hearing. Such notice shall state the location of the building or lot, the general nature of the question involved in the appeal, and the time and place of the hearing.
- (3) *Conduct of hearing.* Any party may appear in person or by agent or by attorney at the hearing. The order of business for the hearing shall be as follows:
  - a. The chairperson, or such person as he shall direct, shall give a preliminary statement of the case.
  - b. The applicant shall present the argument in support of his application.
  - c. Persons opposed to granting the application shall present the argument against the application.
  - d. Both sides will be permitted to present rebuttals to opposing testimony.
  - e. The chairperson shall summarize the evidence, which has been presented, giving the parties opportunity to make objections or corrections.

Witnesses may be called and factual evidence may be submitted, but the Board of Adjustment shall not be limited to consideration of only such evidence as would be admissible in a court of law. The Board of Adjustment may view the premises before arriving at a decision. All witnesses before the Board of Adjustment shall be placed under oath and the opposing party may cross examine them.

- (4) *Rehearings.* An application for a rehearing may be made in the same manner as provided for an original hearing. Evidence in support of the application shall initially be limited to that which is necessary to enable the Board of Adjustment to determine whether there has been a substantial change in the facts, evidence, or conditions in the case. The application for rehearing shall be denied by the Board of Adjustment if, from the record, it finds that there has been no substantial change in facts, evidence or conditions. If the Board of Adjustment finds that there has been a change, it shall thereupon treat the request in the same manner as any other application.

(d) *Decisions.* Decisions shall be made in the following manner:

- (1) *Time.* A decision by the Board of Adjustment shall be made within 30 days from the time of hearing.
- (2) *Form.* Written notice by certified or registered mail of the decision in a case shall be given to the applicant by the Floodplain Administrator as soon as practical after the case is decided. Also, written notice shall be given to owners of the subject property, if not the applicant, and to other persons who have made written request for such notice. The final decision of the Board of Adjustment shall be shown in the record of the case as entered in the minutes of the Board of Adjustment and signed by the Floodplain Administrator and the chairperson upon approval of the minutes of the Board of Adjustment. Such record shall show the reasons for the determination, with summary of the evidence introduced and the findings of fact made by the Board of Adjustment. Where a variance is granted, the record shall state in detail any exceptional difficulty or unnecessary hardship upon which the appeal was based and which the Board of Adjustment finds to exist. The decision may reverse or affirm, wholly or partly, or modify the order, requirement, decision or determination appealed from. The record shall state in detail what, if any, conditions and safeguards are imposed by the Board of Adjustment in connection with the granting of a variance.
- (3) *Expiration of permits.* Unless otherwise specified, any order or decision of the Board of Adjustment granting a variance shall expire if a Floodplain Development Permit, building permit or certificate of occupancy for such use is not obtained by the applicant within one year from the date of the decision.
- (4) *Voting.* The concurring vote of four-fifths of the members of the Board of Adjustment shall be necessary to reverse any order, requirement, decision or determination of the Floodplain Administrator; to decide in favor of the applicant any matter upon which the Board of Adjustment is required by this article to pass; or to grant a variance from the provisions of this article.
- (5) *Public record of decisions.* The decisions of the Board of Adjustment, as filed in its minutes, shall be a public record, available for inspection at all reasonable times.

(e) *Appeals from decision of Board of Adjustment.*

- (1) Appeals from the Board of Adjustment may be taken to the courts pursuant to G.S. §160A-388 as same is effective on and after January 1, 2010 in accordance Session Law 2009-421.
- (2) Every final decision granting or denying a permit under this Part shall be subject to review by the superior court of the county, with the right of jury trial at the election of the party seeking review. The time and manner of election of a jury

trial shall be governed by G.S. 1A-1, Rule 38(b) of the Rules of Civil Procedure. Pending the final disposition of an appeal, no action shall be taken that would be unlawful in the absence of a permit issued under this Part.

**ARTICLE 5.           PROVISIONS FOR FLOOD HAZARD REDUCTION.**

**SECTION A.           GENERAL STANDARDS.**

In all Special Flood Hazard Areas the following provisions are required:

- (1) All new construction and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, and lateral movement of the structure.
- (2) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- (3) All new construction and substantial improvements shall be constructed by methods and practices that minimize flood damages.
- (4) Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding to the Regulatory Flood Protection Elevation. These include, but are not limited to, HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric / gas meter panels /boxes, utility/cable boxes, hot water heaters, and electric outlets/switches.
- (5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
- (6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into flood waters.
- (7) On-site waste disposal systems shall be located and constructed to avoid impairment from them or contamination from them during flooding.
- (8) Any alteration, repair, reconstruction, or improvements to a structure, which is in compliance with the provisions of this ordinance, shall meet the requirements of “new construction” as contained in this ordinance.

- (9) Nothing in this ordinance shall prevent the repair, reconstruction, or replacement of a building or structure existing on the effective date of this ordinance and located totally or partially within the floodway, non-encroachment area, or stream setback, provided there is no additional encroachment below the Regulatory Flood Protection Elevation in the floodway, non-encroachment area, or stream setback, and provided that such repair, reconstruction, or replacement meets all of the other requirements of this ordinance.
- (10) New solid waste disposal facilities and sites, hazardous waste management facilities, salvage yards, and chemical storage facilities shall not be permitted, except by variance as specified in Article 4, Section E (9). A structure or tank for chemical or fuel storage incidental to an allowed use or to the operation of a water treatment plant or wastewater treatment facility may be located in a Special Flood Hazard Area only if the structure or tank is either elevated or floodproofed to at least the regulatory flood protection elevation and in accordance with the provisions of Article 4, Section B(3).
- (11) All subdivision proposals and other development proposals shall be consistent with the need to minimize flood damage.
- (12) All subdivision proposals and other development proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
- (13) All subdivision proposals and other development proposals shall have adequate drainage provided to reduce exposure to flood hazards.
- (14) All subdivision proposals and other development proposals shall have received all necessary permits from those governmental agencies for which approval is required by Federal or State law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.
- (15) When a structure is partially located in a Special Flood Hazard Area, the entire structure shall meet the requirements for new construction and substantial improvements.
- (16) When a structure is located in multiple flood hazard zones or in a flood hazard risk zone with multiple base flood elevations, the provisions for the more restrictive flood hazard risk zone and the highest base flood elevation shall apply.
- (17) No vegetative debris such as wood piles, downed trees or branches, mulch or other materials which could cause blockage of culverts or bridges or which could otherwise create a hazard during a flood event shall be permitted to accumulate within the Special Flood Hazard Area.
- (18) No discarded items such as abandoned vehicles, white goods, tires, or other trash or debris shall be allowed to accumulate within the Special Flood Hazard Area.

## **SECTION B. SPECIFIC STANDARDS.**

In all Special Flood Hazard Areas where Base Flood Elevation (BFE) data has been provided, as set forth in Article 3, Section B, or Article 5, Section D, the following provisions, in addition to the provisions of Article 5, Section A, are required:

- (1) Residential Construction. New construction and substantial improvement of any residential structure (including manufactured homes) shall have the reference level, including basement, elevated no lower than the Regulatory Flood Protection Elevation, as defined in Article 2 of this ordinance.
- (2) Non-Residential Construction. New construction and substantial improvement of any commercial, industrial, or other non-residential structure shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation, as defined in Article 2 of this ordinance. Structures located in A, AE, AO, and A1-30 Zones may be floodproofed to the Regulatory Flood Protection Elevation in lieu of elevation provided that all areas of the structure, together with attendant utility and sanitary facilities, below the regulatory flood protection elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. For AO Zones, the floodproofing elevation shall be in accordance with Article 5, Section G(2). A registered professional engineer or architect shall certify that the standards of this subsection are met. Such certification shall be provided to the Floodplain Administrator as set forth in Article 4, Section B(3) , along with the operational plan and the inspection and maintenance plan plans.
- (3) Manufactured Homes.
  - (a) New and replacement manufactured homes shall be elevated so that the reference level of the manufactured home is no lower than the regulatory flood protection elevation, as defined in Article 2 of this ordinance.
  - (b) Manufactured homes shall be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement, either by certified engineered foundation system, or in accordance with the most current edition of the State of North Carolina Regulations for Manufactured Homes adopted by the Commissioner of Insurance pursuant to NCGS 143-143.15. Additionally, when the elevation would be met by an elevation of the chassis thirty-six (36) inches or less above the grade at the site, the chassis shall be supported by reinforced piers or engineered foundation. When the elevation of the chassis is above thirty-six (36) inches in height, an engineering certification is required.
  - (c) All enclosures or skirting shall meet the requirements of Article 5, Section B(4).
  - (d) An evacuation plan must be developed for evacuation of all residents of all new, substantially improved or substantially damaged manufactured home parks or

subdivisions located within flood prone areas. This plan shall be filed with and approved by the Floodplain Administrator and the local Emergency Management Coordinator.

- (4) Elevated Buildings. Fully enclosed area, of new construction and substantially improved structures, which is below the lowest floor:
- (a) shall not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator). The interior portion of such enclosed area shall not be finished or partitioned into separate rooms, except to enclose storage areas;
  - (b) shall be constructed entirely of flood resistant materials at least to the regulatory flood protection elevation; and
  - (c) shall include, in Zones A, AO, AE, and A1-30, flood openings to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet or exceed the following minimum design criteria:
    - (i) A minimum of two flood openings on different sides of each enclosed area subject to flooding;
    - (ii) The total net area of all flood openings must be at least one (1) square inch for each square foot of enclosed area subject to flooding;
    - (iii) If a building has more than one enclosed area, each enclosed area must have flood openings to allow floodwaters to automatically enter and exit;
    - (iv) The bottom of all required flood openings shall be no higher than one (1) foot above the adjacent grade;
    - (v) Flood openings may be equipped with screens, louvers, or other coverings or devices, provided they permit the automatic flow of floodwaters in both directions; and
    - (vi) Enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require flood openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires flood openings as outlined above.

(5) Additions/Improvements.

- (a) Additions and/or improvements to pre-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:
  - (i) not a substantial improvement, the addition and/or improvements must be designed to minimize flood damages and must not be any more non-conforming than the existing structure.
  - (ii) a substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.
- (b) Additions to post-FIRM structures with no modifications to the existing structure other than a standard door in the common wall shall require only the addition to comply with the standards for new construction.
- (c) Additions and/or improvements to post-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:
  - (i) not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction.
  - (ii) a substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.

(6) Recreational Vehicles. Recreational vehicles shall either:

- (a) be on site for fewer than 180 consecutive days and be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities, and has no permanently attached additions); or
- (b) meet all the requirements for new construction.

- (7) Temporary Non-Residential Structures. Prior to the issuance of a floodplain development permit for a temporary structure, the applicant must submit to the Floodplain Administrator a plan for the removal of such structure(s) in the event of a hurricane, flash flood or other type of flood warning notification. The following information shall be submitted in writing to the Floodplain Administrator for review and written approval:

- (a) a specified time period for which the temporary use will be permitted. Time specified may not exceed three (3) months, renewable up to one (1) year;
  - (b) the name, address, and phone number of the individual responsible for the removal of the temporary structure;
  - (c) the time frame prior to the event at which a structure will be removed (i.e., minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification);
  - (d) a copy of the contract or other suitable instrument with the entity responsible for physical removal of the structure; and
  - (e) designation, accompanied by documentation, of a location outside the Special Flood Hazard Area, to which the temporary structure will be moved.
- (8) Accessory Structures. When accessory structures (sheds, detached garages, etc.) are to be placed within a Special Flood Hazard Area, the following criteria shall be met:
- (a) Accessory structures shall not be used for human habitation (including working, sleeping, living, cooking or restroom areas);
  - (b) Accessory structures shall not be temperature-controlled;
  - (c) Accessory structures shall be designed to have low flood damage potential;
  - (d) Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;
  - (e) Accessory structures shall be firmly anchored in accordance with the provisions of Article 5, Section A(1);
  - (f) All service facilities such as electrical shall be installed in accordance with the provisions of Article 5, Section A(4); and
  - (g) Flood openings to facilitate automatic equalization of hydrostatic flood forces shall be provided below regulatory flood protection elevation in conformance with the provisions of Article 5, Section B(4)(c).

An accessory structure with a footprint less than 150 square feet that satisfies the criteria outlined above does not require an elevation or floodproofing certificate. Elevation or floodproofing certifications are required for all other accessory structures in accordance with Article 4, Section B(3).

**SECTION C.           RESERVED.**

**SECTION D.           STANDARDS FOR FLOODPLAINS WITHOUT ESTABLISHED  
BASE FLOOD ELEVATIONS.**

Within the Special Flood Hazard Areas designated as Approximate Zone A and established in Article 3, Section B, where no Base Flood Elevation (BFE) data has been provided by FEMA, the following provisions, in addition to the provisions of Article 5, Section A, shall apply:

- (1) No encroachments, including fill, new construction, substantial improvements or new development shall be permitted within a distance of thirty (30) feet each side from top of bank or five times the width of the stream, whichever is greater, unless certification with supporting technical data by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
- (2) The BFE used in determining the Regulatory Flood Protection Elevation shall be determined based on the following criteria:
  - (a) When Base Flood Elevation (BFE) data is available from other sources, all new construction and substantial improvements within such areas shall also comply with all applicable provisions of this ordinance and shall be elevated or floodproofed in accordance with standards in Article 5, Sections A and B.
  - (b) When floodway data is available from a Federal, State, or other source, all new construction and substantial improvements within floodway areas shall also comply with the requirements of Article 5, Sections B and F.
  - (c) All subdivision, manufactured home park and other development proposals shall provide Base Flood Elevation (BFE) data if development is greater than five (5) acres or has more than fifty (50) lots/manufactured home sites. Such Base Flood Elevation (BFE) data shall be adopted by reference in accordance with Article 3, Section B and utilized in implementing this ordinance.
  - (d) When Base Flood Elevation (BFE) data is not available from a Federal, State, or other source as outlined above, the reference level shall be elevated or floodproofed (nonresidential) to or above the Regulatory Flood Protection Elevation, as defined in Article 2. All other applicable provisions of Article 5, Section B shall also apply.

**SECTION E.           STANDARDS FOR RIVERINE FLOODPLAINS WITH BFE BUT  
WITHOUT ESTABLISHED FLOODWAYS OR NON-  
ENCROACHMENT AREAS.**

Along rivers and streams where Base Flood Elevation (BFE) data is provided by FEMA or is available from another source but neither floodway nor non-encroachment areas are identified

for a Special Flood Hazard Area on the FIRM or in the FIS report, the following requirements shall apply to all development within such areas:

- (1) Standards of Article 5, Sections A and B; and
- (2) Until a regulatory floodway or non-encroachment area is designated, no encroachments, including fill, new construction, substantial improvements, or other development, shall be permitted unless certification with supporting technical data by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one (1) foot at any point within the community.

**SECTION F. FLOODWAYS AND NON-ENCROACHMENT AREAS.**

Areas designated as floodways or non-encroachment areas are located within the Special Flood Hazard Areas established in Article 3, Section B. The floodways and non-encroachment areas are extremely hazardous areas due to the velocity of floodwaters that have erosion potential and carry debris and potential projectiles. The following provisions, in addition to standards outlined in Article 5, Sections A and B, shall apply to all development within such areas:

- (1) No encroachments, including fill, new construction, substantial improvements and other developments shall be permitted unless:
  - (a) it is demonstrated that the proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood, based on hydrologic and hydraulic analyses performed in accordance with standard engineering practice and presented to the Floodplain Administrator prior to issuance of floodplain development permit, or
  - (b) a Conditional Letter of Map Revision (CLOMR) has been approved by FEMA. A Letter of Map Revision (LOMR) must also be obtained upon completion of the proposed encroachment.
- (2) If Article 5, Section F(1) is satisfied, all development shall comply with all applicable flood hazard reduction provisions of this ordinance.
- (3) No new manufactured homes shall be permitted. Replacement manufactured homes in an existing manufactured home park or subdivision may be permitted, provided the following provisions are met:
  - (a) the anchoring and the elevation standards of Article 5, Section B(3); and
  - (b) the no encroachment standard of Article 5, Section F(1).
- (4) No new habitable structures, including structures used for working, sleeping, living, cooking, or restroom facilities, shall be permitted in floodways and non-encroachment areas.

**ARTICLE 6.                    LEGAL STATUS PROVISIONS.**

**SECTION A.                    EFFECT ON RIGHTS AND LIABILITIES UNDER THE EXISTING FLOOD DAMAGE PREVENTION ORDINANCE.**

This ordinance in part comes forward by re-enactment of some of the provisions of the flood damage prevention ordinance enacted February 10, 2005, as amended, and it is not the intention to repeal but rather to re-enact and continue to enforce without interruption of such existing provisions, so that all rights and liabilities that have accrued thereunder are reserved and may be enforced. The enactment of this ordinance shall not affect any action, suit or proceeding instituted or pending. All provisions of the Flood Damage Prevention Ordinance of the Town of Montreat enacted on February 10, 2005, as amended, which are not reenacted herein are repealed.

The date of the initial Flood Damage Prevention Ordinance for Buncombe County is August 1, 1980.

**SECTION B.                    EFFECT UPON OUTSTANDING FLOODPLAIN DEVELOPMENT PERMITS.**

Nothing herein contained shall require any change in the plans, construction, size, or designated use of any development or any part thereof for which a floodplain development permit has been granted by the floodplain administrator or his or her authorized agents before the time of passage of this ordinance; provided, however, that when construction is not begun under such outstanding permit within a period of six (6) months subsequent to the date of issuance of the outstanding permit, construction or use shall be in conformity with the provisions of this ordinance.

**SECTION C.                    SEVERABILITY.**

If any section, clause, sentence, or phrase of the Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this Ordinance.

**SECTION D.                    EFFECTIVE DATE.**

This ordinance shall become effective on January 6, 2010.

[CONTINUED ON FOLLOWING PAGE]

**SECTION E.           ADOPTION CERTIFICATION.**

**READ, APPROVED, AND ADOPTED**, this the 30<sup>th</sup> day of November, 2009.

[SEAL]

\_\_\_\_\_  
Letta Jean Taylor, Mayor

\_\_\_\_\_  
Ronald W. Nalley, Town Administrator

ATTEST:

I hereby certify this is a true and correct copy of this Flood Damage Prevention Ordinance, duly adopted by the Town of Montreat on the 30<sup>th</sup> day of November, 2009 as it appears of record in the official minutes.

\_\_\_\_\_  
Misty Gedlinske, Town Clerk

**MONTREAT CODE OF GENERAL ORDINANCES**

**CHAPTER K -- ENVIRONMENT**

**ARTICLE II: SOIL EROSION AND SEDIMENTATION CONTROL ORDINANCE**

*(Reference to the “Buncombe County Soil Erosion and Sedimentation Control Ordinance.” This document is separately numbered and follows this title page)*

# MONTREAT CODE OF GENERAL ORDINANCES

## CHAPTER K -- ENVIRONMENT

### ARTICLE III: STORMWATER MANAGEMENT

*(Revised June 11, 2009)*

#### 300. General Provisions

1. Purpose. The stormwater management regulations of this article shall protect, maintain and enhance the public health, safety, environment and general welfare by establishing minimum requirements and procedures to control the adverse effects of stormwater runoff associated with new development. Proper management of stormwater runoff will protect property, control stream channel erosion, prevent increased flooding associated with new development, protect floodplains, wetlands, water resources, riparian and aquatic ecosystems, and otherwise provide for environmentally sound use of the town's natural resources.
2. Scope. Except as otherwise expressly stated, the stormwater management regulations of this article apply to all development within Montreat and the unincorporated Buncombe County inside the extraterritorial jurisdiction of Montreat. Additional requirements regulating development on steeply-sloping sites ~~( $\geq$ 40%)~~ are detailed in Montreat Code of General Ordinances, Chapter K—Environment, Article IV: Hillside Development.
3. Applicability and Exemptions. The stormwater management regulations of this article do not apply to any of the following development activities:
  - a) Activities including the breeding and grazing of livestock, undertaken on agricultural land for the production of plants and animals useful to humans, including but not limited to:
    - Forages and sod crops, grains and feed crops, tobacco, cotton and peanuts.
    - Dairy animals and apiary products.
    - Poultry and poultry products.
    - Livestock, including beef cattle, sheep, swine, horses, ponies, mules and goats.
    - Bees and dairy products.
    - Fur producing animals.
  - b) Activities undertaken on forestland for the production or harvesting of timber and timber products and conducted in accordance with best management practices as set out in Forest Practice Guidelines Relayed to Water Quality referenced as follows:

- c) [http://www.ncforestry.org/docs/Landowners/regulations/mgmt\\_practices.htm](http://www.ncforestry.org/docs/Landowners/regulations/mgmt_practices.htm)  
Activities for which a permit is required under the mining act, G.S. 74-46 et. seq.

<http://www.dlr.enr.state.nc.us/pages/miningprogram.html>

- d) Any development in which the owner has accrued a vested right. For the purposes of this Chapter K only, a vested right is recognized if either (1) a preliminary plan has been approved by the Planning and Zoning Commission that meets the required specifications and standards of the Town of Montreat ordinances, Buncombe County ordinances, or (ii) a Land Disturbing Permit has been issued pursuant to the Buncombe County Soil Erosion and Sedimentation Control ordinance in effect on or before the effective date of this ordinance, and that such plan or permit remains unexpired.

A party in interest to a particular plan found to have no vested right to construct or develop on or before the effective date of this ordinance may appeal to the Town of Montreat Board of Adjustment for a hearing de novo. Such hearing shall be expedited and shall be limited to the issue of whether the landowner has a vested right to construct or develop their site under plans submitted prior to the effective date of this ordinance.

Redevelopment or expansion to uses included in the above categories are not subject to the stormwater requirements unless it *qualifies* by having disturbed area of 5,000 square feet or greater; at least 24% total lot area developed to include impervious cover; or addition of 2,500 square feet or more impervious surface, unless exempt pursuant to this ordinance.

### **301. Interpretations and Definitions**

1. Meaning and Intent. If a different or more specific meaning is given for a term defined elsewhere in the Town of Montreat Code, the meaning and application of the term in this ordinance shall control for purposes of application of this ordinance.
2. Text Controls in Event of Conflict. In the event of a conflict or inconsistency between the text of this ordinance and any heading, caption, figure, illustration, table, or map, the text shall control.
3. Authority for Interpretation. The Stormwater Administrator has authority to determine the interpretation of this ordinance. Any person may request an interpretation by submitting a written request to the Administrator who shall respond in writing within 30 days. The Stormwater Administrator shall keep on file a record of all written interpretations of this ordinance.
4. References to Statutes, Regulations, and Documents. Whenever reference is made to a resolution, ordinance, statute, regulation, manual or document, it shall be construed as a reference to the most recent edition of such that has been finalized and published with due provision for notice and comment, unless otherwise specifically stated.

5. Word Usage.

- a) The term “Town” shall herein refer to the Town of Montreat.
- b) The term “Administrator” shall herein refer to the Stormwater Administrator of the Town of Montreat.
- c) The term “Department” shall herein refer to the NC Department of Environment and Natural Resources (NCDENR).
- d) The term “Division” shall herein refer to the NC Division of Water Quality (NCDWQ).
- e) “Design Manual” shall herein refer to the most current edition of the *Stormwater Best Management Practice Manual* approved by NCDWQ. Development projects, or *qualified* redevelopment projects, less than one acre may use the *Community Conservation Assistance Program (CCAP) Stormwater Best Management Practice Design Manual* prepared by the Biological and Agricultural Engineering Department of NCSU approved by NCDENR.
- f) Lot area refers to the amount of horizontal land area contained inside the lot lines of a lot or site.

6. When used in this Ordinance, the following words and terms shall have the meaning set forth in this section, unless other provisions of this Ordinance specifically indicate otherwise.

Applicant: An owner or developer of a site who executes the Stormwater Permit Application pursuant to Town of Montreat Stormwater Ordinance.

Best Management Practices (BMP's): Best Management Practices (BMP's) are effective, practical, structural or nonstructural methods which prevent or reduce the movement of sediment, nutrients, pesticides and other pollutants from the land to surface or ground water, or which otherwise protect water quality from potential adverse effects of silvicultural activities.

Built-upon Area(BUA): 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.

Connection: Any ditch, pipe, or other device for the diversion or transmission of storm drainage, which will in any way affect the operation or maintenance of the drainage ways.

Conveyance: Any feature of the landscape or earth, manmade or natural that carries water in a concentrated flow.

Detain: To store and slowly release stormwater runoff following precipitation by means of a surface depression or tank and an outlet structure.

Develop: Conversion of land to new service or purpose so as to make use of its resources, or to use the land for residential or commercial purposes.

Development: Any land disturbing activity which adds to or changes the amount of impervious or partially pervious cover on a land area or which otherwise decreases the infiltration of precipitation into the soil, other than a rebuilding activity that does not qualify as redevelopment.

Disturbed area: The portions of a development project that include graded areas disturbed so as to remove the natural cover in conjunction with development activities; both pervious and impervious surfaces installed and/or constructed including, but not limited to, buildings; concrete/asphalt pavement and gravel areas such as parking lots, patios, roads, and paths; lawns and artificially surfaced (e.g. recycled rubber mulch, crushed brick, etc) areas; retention structures including, but not limited to, timber, stone and masonry walls; installation of septic/sewage systems, buried tanks or cisterns, etc.

Drainage structures: Shall include swales, channels, storm sewers, curb inlets, yard inlets, culverts, and other structures designed or used to convey stormwater.

Impervious surface: Any surface that, in whole or in part, restricts or prevents the natural absorption of water into the ground. Such surfaces may include, but are not limited to, gravel, concrete, asphalt or other paving material, and all areas covered by the footprint of buildings or structures.

Land disturbing activity: Any use of, or operations on, the land by any person in residential, industrial, educational, institutional, or commercial development, including road construction and maintenance, that results in a change in the natural cover or topography.

Low Impact Development (LID): A term used in the United States to describe a land planning and engineering design approach to managing stormwater runoff. LID emphasizes conservation and use of on-site natural features to protect water quality.

Municipal Separate Storm Sewer Systems (MS4s): An MS4 is a conveyance or system of conveyances that is:

- Owned by a state, city, town, village, or other public entity that discharges to waters of the U.S.;
- Designed or used to collect or convey stormwater (including storm drains, pipes, ditches, etc.);
- Not a combined sewer; and
- Not part of a Publicly Owned Treatment Works (sewage treatment plant).

National Pollutant Discharge Elimination System (NPDES): The U.S. Environmental Protection Agency (EPA) administers this stormwater permitting program that regulates stormwater discharges from three potential sources: municipal separate storm sewer systems (MS4s), construction activities, and industrial activities.

Non-structural methods: Non-structural BMPs are designed to limit the amount of pollutants available in the environment that would potentially end up in stormwater runoff. Non-structural BMPs can be achieved through such things as education, management and development practices. Examples include ordinances and practices associated with land use and comprehensive site planning.

One-year, 24-hour storm: The surface runoff resulting from a 24-hour rainfall of intensity expected to be equaled or exceeded, on average, once in 12 months and with duration of 24-hours.

Redevelopment: Any new construction on a site with pre-existing uses involving either partial or full demolition of existing structures, establishing new use(s) with a corresponding increase in impervious or partially pervious surface, or which otherwise decreases the infiltration of precipitation into the soil.

Retain: To capture and hold stormwater runoff following precipitation by means of surface depression allowing the water to infiltrate into the soil, thus reducing the hydrologic and pollution impacts downstream.

Structural methods: Physical systems installed to control pollutants and subsequent transport in stormwater. Many structural BMPs are designs based on natural systems and rely upon vegetation and soil mechanisms in order to perform as intended, such as wet ponds, green roofs, and stormwater wetlands; other, more conventional engineered solutions include bioretention areas, dry detention, permeable pavement, sand filters, and underground detention.

Stormwater: Any surface flow, runoff, and drainage consisting entirely of water from rainfall events.

Stream: A watercourse that collects surface runoff.

Total Suspended Solids (TSS): A water quality indicator illustrating the particulates present in a water sample, typically expressed as weight per volume (milligrams per litre or mg/l). The value is calculated from dry-weight of particles trapped by a filter, typically of a specified pore size, in the volume of water filtered. It is listed as a conventional pollutant in the U.S. Clean Water Act.

Velocity: The average rate of flow through the cross section of the main channel at the peak flow of the storm of interest.

### **302. Effective Date and Transitional Provisions**

This Ordinance shall take effect on (*Date of Adoption*). All development and redevelopment projects for which complete and full applications were submitted and approved by the Town of Montreat, or for which conditional use permits have been issued, prior to the effective date of this ordinance shall be exempt from complying with provisions of this ordinance dealing with the control and/or management of post-construction runoff, but shall be required to comply with all other applicable provisions.

Any violation of provisions existing on the effective date of this ordinance shall continue to be a violation under this ordinance and be subject to penalties and enforcement under this ordinance unless the use, development, construction, or other activity complies with the provisions of this ordinance.

### **303. Administration and Procedures.**

1. Administration of this Ordinance. All questions arising in connection with this Ordinance shall be presented first to the Stormwater Administrator who shall be responsible for the day-to-day administration of this Ordinance. The Board of Adjustment shall have the authority to rule on matters of interpretation of this Ordinance and consider appeals from the decisions of the Stormwater Administrator. Any appeal from a decision of the Board of Adjustment shall be to the courts as provided by law. Where the regulations of this ordinance are more restrictive or impose higher standards or requirements than other environmental or land use codes for the Town of Montreat, then the requirements of this ordinance shall govern.
2. Stormwater Administrator. The Codes Administrator shall serve as the Stormwater Administrator by designation of the Board of Commissioners. The Stormwater Administrator shall have the following powers and duties under this ordinance:
  - a) To review and approve, approve with conditions, or disapprove applications for approval of plans pursuant to this ordinance;
  - b) To make determinations and render interpretations of this ordinance;
  - c) To establish application requirements and schedules for submittal and review of applications and appeals, to review and make recommendations to the Planning and Zoning Commission and/or Zoning Board of Adjustment on applications for development or redevelopment approvals;
  - d) To enforce the provisions of this ordinance in accordance with its enforcement provisions;
  - e) To maintain records, maps, and official materials as relate to the adoption, amendment, enforcement, or administration of this ordinance;
  - f) To provide expertise and technical assistance upon request;

- g) To take any other action necessary to administer the provisions of this ordinance.

3. Review and Appeals Procedure.

- a) A Stormwater Control Permit is required for all development and *qualified* redevelopment on lots with:
- Disturbed area of 5,000 square feet or greater; or
  - At least 24% total lot area developed to include impervious cover;
  - Or addition of 2,500 square feet or more impervious surface, unless exempt pursuant to this ordinance.

A building permit shall not be issued for *any* development project until the required Stormwater Control Permit has been issued.

- b) Two (2) copies of the completed stormwater plan submittal shall be submitted to the Stormwater Administrator for review.
- c) A site plan which includes orientation referencing north meridian; scale of drawing; boundaries and acreage of the parcel; adjacent streets and any easements; existing and/or proposed structures including setbacks; structure dimensions and separation distance(s); contour interval; existing and proposed contours; and clear graphic indication of any proposed alterations, additions, or details showing location of any systems of stormwater control, retention and treatment.

4. Application and permit review fees shall be established by the Montreat Board of Commissioners, and may amend and update fees and policies when needed. Current application fees are posted in the fee schedule for town services. Development projects less than 10,000 SF disturbed area, which are not part of a larger plan and meet the criteria detailed in 3(a) above, are eligible for reduced stormwater fees contingent upon extent of BMP's utilized. The Administrator shall grant a fifty-percent (50%) reduction in permit fees if it is determined project stormwater measures achieve greatest practicable treatment of post-construction runoff. LEED, Green Globe, NC Healthy Built Home, Clear Water Contractor, and other programs/certifications recognized at the national or state level to be consistent with LID project goals shall receive consideration as positively impacting overall stormwater treatment. Reduced building permit fees may also be granted by the Building Inspector for "Green" building practices/materials used, and will supplement any fee reductions granted under this ordinance.

5. Plan review fees shall be double posted amount when land disturbing activity begins before a required Stormwater Control Permit is issued by the Town.

6. The Administrator shall review the submittal for completeness and for compliance with the requirements of this ordinance. An incomplete or nonconforming permit application will be returned to the applicant within two business days with an explanation of issues requiring resolution before plan review can be initiated.
7. Within thirty (30) days of receipt of complete application for development approval, the Administrator shall take action on the plan.
8. Approval, approval with modifications, or denial of the proposed stormwater control measures shall be in writing. In the case of denial, the reasons for denial shall be clearly stated. The applicant may appeal the decision of the Administrator to the Board of Adjustment. In the event a Stop Work Order has been issued for any violation of this ordinance, the party seeking to challenge the Order may request a special meeting of the Board of Adjustment to ensure a timely resolution of the matter.
9. Upon appeal, the Montreat Board of Adjustment will conduct a hearing in the nature of a quasi-judicial proceeding with all findings of fact supported by material evidence.
10. Decisions appealing the final decision by the Board of Adjustment may be filed in Buncombe County Superior Court, to be reviewed by proceedings in the nature of certiorari, within thirty (30) days of the final decision of the Board of Adjustment.
11. The Administrator shall take action on revisions to a stormwater control application which has been previously denied, within fifteen (15) days of receipt of the revised plan application for approval.
12. If a revised application is not re-submitted within sixty (60) calendar days from the date the applicant was notified, the application shall be considered withdrawn, and a new submittal for the same or substantially the same project shall be required along with the appropriate fee and pursuant to the then current standards.
13. Application for an amendment to an approved Stormwater Control Plan in written and graphic form may be made at any time. Until such time as an amendment is approved by the Administrator, it shall be unlawful to deviate from the approved plan.
14. A Stormwater Control Permit shall become null and void if the applicant has failed to make substantial progress within the prescribed timeframe as defined in this ordinance. The Administrator may grant a single, one-month extension of this time limit, for good cause shown, upon receiving a written request from the applicant before the expiration of the approved plan.

### 304. Permit Application and Plans.

The stormwater permit application shall describe in detail how post-development stormwater run-off will be controlled and managed, the design of all stormwater facilities and practices, and how the proposed project will meet the requirements of this ordinance. The following information should also be included in the submittal:

1. Existing Conditions / Proposed Site Plans. Existing conditions and proposed site layout sketch plans, which illustrate at a minimum: existing and proposed topography; perennial and intermittent streams; mapping of predominant soils from soil surveys (when available); boundaries of existing predominant vegetation and proposed limits of clearing and grading; and location of existing and proposed roads, buildings, parking areas and other impervious surfaces.
2. Natural Resources Inventory: A written or graphic inventory of the natural resources at the site and surrounding area as it exists prior to the commencement of the project. This description should include a discussion of soil conditions, forest cover, geologic features, topography, wetlands, and native vegetative areas on the site, as well as the location and boundaries of other natural feature protection and conservation areas such as lakes, ponds, floodplains, stream buffers and other setbacks (e.g., drinking water well setbacks, septic setbacks, etc). Particular attention should be paid to environmentally sensitive features that provide particular opportunities or constraints for development.
3. Stormwater Management System Plan. A written or graphic concept plan of the proposed post-development stormwater management system including: preliminary selection and location of proposed structural stormwater controls; low impact design elements; location of existing and proposed conveyance systems such as grass channels, swales, and storm drains; flow paths; location of floodplain/floodway limits; relationship of site to upstream and downstream properties and drainages; and preliminary location of proposed stream channel modifications, such as bridge or culvert crossings.
4. Area-Based Requirements.
  - a) *Larger Development Projects:* All stormwater management plans relating to subdivisions or development or redevelopment plans on lots equal to or greater than one acre, or on lots less than an acre with at least 10,000 square feet disturbed area, or which are part of a larger common plan of development or sale, including a subdivision, Planned Unit Development, or other Special Use shall be prepared by a qualified registered North Carolina professional engineer, environmental scientist or landscape architect, and the consulting professional shall perform services only in their area of competence. The Administrator shall determine if the

consulting professional may verify that the design of all stormwater management facilities and practices meets submittal requirements for complete applications, and that the designs and plans are sufficient to comply with this ordinance.

b) *Smaller Projects:* Stormwater management plans relating to development or qualifying redevelopment on lots less than 10,000 square feet disturbed area in size shall meet the minimum permit application requirements of Section 304. 1-3, and applicants shall provide designs demonstrating adequate stormwater management measures selected from a list of approved BMP's as follows:

- Diffuse or Directed Flow Designs
- Rain Gardens
- Backyard Wetland
- Stormwater Collection (Cistern) and Reuse Systems
- Vegetated Swales
- Impervious Removal
- Permeable Pavement\*

\*Due to the higher clay content and low permeability of many soils in our region, permeable pavement's usefulness is limited to detention as a stormwater management tool in Western North Carolina.

Detailed information regarding the design, installation and maintenance of the stormwater management BMP's listed above are contained in the *CCAP Stormwater Best Management Practice Design Manual* prepared by Biological and Agricultural Engineering Department of NCSU, and published in cooperation with NCDENR. A copy of the manual is retained at the Town Zoning and Inspections Department, or available at the following website:

<http://www.bae.ncsu.edu/stormwater/PublicationFiles/DSWC.Manual.2007.pdf>

5. As-Built Plans and Final Approval. Upon completion of a project, and before a certificate of occupancy shall be granted, the applicant shall certify that the completed project is in accordance with the approved stormwater management plans and designs, and shall submit actual "as built" plans for all stormwater management facilities or practices after final construction is completed. The plans shall show the final design specifications for all stormwater management facilities and practices and the field location, size, depth, and planted vegetation of all measures, controls, and devices, as installed.

For larger development projects referenced in Section 304. 4(Area-Based Requirements), the designer of the stormwater management measures and plans shall certify, *under seal*, that the as-built stormwater measures, controls, and devices are in compliance with the approved stormwater management plans and designs and with the requirements of this ordinance. A final

inspection and approval by the Stormwater Administrator shall occur before the release of any performance securities or a Certificate of Occupancy is issued.

Approval authorizes the applicant to go forward with only the specific plans and activity authorized in the permit. The approval shall not be construed to exempt the applicant from obtaining other applicable approvals from local, state, and federal authorities.

### **305. General Standards.**

Until such time as a comprehensive watershed management plan for the Swannanoa Basin is developed, the following guidelines apply.

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.
2. All other projects which are not exempt from this ordinance must submit a stormwater management plan in order to receive a permit.
3. The approval of the stormwater permit shall require an enforceable restriction on property usage that runs with the land, such as a recorded deed restriction or protective covenants, or designated space on approved preliminary plat or master plan to ensure that future development and redevelopment maintains the site consistent with the approved project plans.
4. When a Stormwater BMP or management system is established under the control of a neighborhood association or other private entity, the developer shall develop and provide an operations and maintenance manual on the BMP to the entity as well as to the Town of Montreat Zoning and Inspections Department for future reference.
5. All development and qualifying redevelopment projects which cumulatively disturb at least 10,000 square feet or which are a part of a larger plan shall implement stormwater control measures that comply with the following standards:
  - a) Project sites must employ Low Impact Development (LID) practices to analyze the infiltration capacity and natural drainages of the site and develop a system of controls which mimic the existing natural hydrology

and which cumulatively capture and treat the runoff from the first inch of rainfall.

LID practices may include any combination of site design techniques, strategies, and BMPs to store, infiltrate, evaporate, retain, and detain runoff on the site to more closely replicate pre-development runoff thereby limiting the increase in pollutant loads caused by development.

- b) Wherever LID practices are not achievable, or have not been demonstrated the management measures controlling the final run-off from the site shall control and treat the difference in stormwater runoff volume leaving the project site between the pre-and post-development conditions for, at a minimum, the 1-year, 24-hour storm as determined by NOAA data for Black Mountain (See [http://dipper.nws.noaa.gov/hdsc/pfds/orb/nc\\_pfds.html](http://dipper.nws.noaa.gov/hdsc/pfds/orb/nc_pfds.html)). Runoff volume drawdown time shall be a minimum of 48 hours, but not more than 120 hours.
- c) All structural stormwater treatment systems used to meet the requirements of the program shall be designed to have a minimum of 85% average annual removal for Total Suspended Solids.
- d) Peak storm water runoff rates shall be controlled for all development at or exceeding 24% built upon area for both LID and conventional approaches. The peak storm water runoff release rates leaving the site during post-construction conditions shall be equal to or less than the pre-development peak storm water runoff release rates for the 1-year frequency, 24-hour duration storm event as determined by NOAA data for Black Mountain. The emergency overflow and outlet works for any pond or wetland constructed as a stormwater BMP shall be capable of safely passing a discharge with a minimum recurrence frequency of 50 years. For detention basins, the temporary storage capacity shall be restored within 72 hours. Requirements of the Dam Safety Act shall be met when applicable.
- e) No one BMP shall receive runoff from an area greater than three (3) acres. However, the total drainage area from BMPs used in series (i.e., integrated) can exceed this three (3) acre maximum.
- f) *Encroachments:* Water quality BMPs may encroach into a required buffer or yard setback as long as the encroachment does not disturb the majority of existing vegetation. Minor under story may be disturbed in order to accommodate water quality structures. Trees and shrubs shall be placed to maximize screening where the encroachment takes place. Installation of water quality BMP's shall not affect calculation of the Approved Graded Area (AGA) as defined in Chapter K - Environment, Article IV: Hillside Development if revegetation of the disturbed area is determined to adequately offset negative impacts of disturbance.

**306. Standards for Stormwater Control Measures.**

1. Evaluation According to Contents of Design Manual. All stormwater control measures and stormwater treatment practices (also referred to as Best Management Practices, or BMPs) required under this ordinance shall be evaluated by the Stormwater Administrator according to the policies, criteria, and information, including technical specifications and standards and the specific design criteria for each stormwater practice, in the Design Manual. The Stormwater Administrator shall determine whether they will be adequate to meet the requirements of this ordinance.
2. Determination of Adequacy; Presumptions and Alternatives. Stormwater treatment practices that are designed, and constructed, and maintained in accordance with the criteria and specifications in the Design Manual will be presumed to meet the minimum water quality and quantity performance standards of this ordinance. Whenever an applicant proposes to utilize a practice or practices not designed and constructed in accordance with the criteria and specifications in the Design Manual, the applicant shall have the burden of demonstrating that the practice(s) will satisfy the minimum water quality and quantity performance standards of this ordinance. The Stormwater Administrator may require the applicant to provide such documentation, calculations, and examples as necessary to determine whether such an affirmative showing is made.

**307. Additional Standards.**

1. Trout Waters. In addition to standards for stormwater handling set out in the design manual, larger development and redevelopment projects that drain in whole or part to class TR waters shall design and implement the best stormwater practices that do not result in a sustained increase in the receiving water temperature, while still meeting the other requirements of this ordinance. Smaller qualified projects that are determined to create a potential negative impact to class TR waters due to design, type of improvement, or other relevant factors, shall also be required to comply with this standard.
2. Onsite Wastewater.
  - a) *Operation and Maintenance Requirements:* New and replaced onsite systems for domestic wastewater installed after the effective date of this ordinance must be approved and permitted by the Buncombe County Health Department. Both the Buncombe County septic permit and documentation showing the operation and maintenance for the system are required before a Town Building Permit may be issued.

- b) *Standards for Operation and Maintenance:* Onsite systems for domestic wastewater covered by this ordinance shall be operated and maintained so as to avoid adverse effects on surface water and groundwater, including eutrophication of surface water and microbial or nitrate contamination of groundwater. Septic tank residuals shall be pumped whenever necessary to assure the proper operation of the system to meet these standards, and the septage shall be reused or disposed of in a manner that does not present significant risks to human health, surface water or groundwater.

### **308. General Standards for Maintenance**

1. Function of BMPs as Intended. The owner of each structural BMP installed pursuant to this ordinance shall maintain and operate it so as to preserve and continue its function in controlling stormwater quality and quantity at the degree or amount of function for which the structural BMP was designed.
  
2. Annual Maintenance Inspection and Report.  
The person responsible for maintenance of any structural BMP installed pursuant to this ordinance shall submit to the Stormwater Administrator an annual inspection report using standard forms supplied by the Administrator or, if deemed acceptable, provided by the designer of each engineered system. The inspection report shall contain all of the following:
  - The name and address of the land owner;
  - The recorded book and page number of the lot of each structural BMP;
  - A statement that an inspection was made of all structural BMPs;
  - The date the inspection was made;
  - A statement that all inspected structural BMPs are performing properly and are in compliance with the terms and conditions of the approved maintenance agreement required by this ordinance or, if not functioning as designed, a detailed description of each deficiency and how the condition was corrected, and
  - For engineered structural systems requiring detailed monitoring of specific water quality parameters and indicators, the original signature and seal of the engineer, surveyor, or landscape architect performing services only in their area of competence. Systems requiring more frequent monitoring or inspections shall be maintained according to design requirements.

All inspection reports shall be on forms supplied by the Stormwater Administrator unless otherwise approved. An original inspection report shall be provided to the Stormwater

Administrator beginning one year from the date of as-built certification and each year thereafter on or before the date of the as-built certification.

### **309. Operation and Maintenance Agreement**

1. In General. Prior to the conveyance or transfer of any lot or building site to be served by a structural BMP pursuant to this ordinance, and prior to issuance of any permit for development or redevelopment requiring a structural BMP pursuant to this ordinance, the applicant or owner of the site must execute an operation and maintenance agreement that shall be binding on all subsequent owners of the site, portions of the site, and lots or parcels served by the structural BMP. Until the transference of all property, sites, or lots served by the structural BMP, the original owner or applicant shall have primary responsibility for carrying out the provisions of the maintenance agreement.

The operation and maintenance agreement shall require the owner or owners to maintain, repair and, if necessary, reconstruct the structural BMP, and shall state the terms, conditions, and schedule of maintenance for the structural BMP. In addition, it shall grant to the Town a right of entry in the event that the Stormwater Administrator has reason to believe it has become necessary to inspect, monitor, maintain, repair, or reconstruct the structural BMP; however, in no case shall the right of entry, of itself, confer an obligation on the Town to assume responsibility for the structural BMP.

The operation and maintenance agreement must be approved by the Stormwater Administrator prior to plan approval and shall be referenced on the final plat recorded with the County Register of Deeds upon final plat approval. A copy of the recorded maintenance agreement shall be given to the Stormwater Administrator within fourteen (14) days following its recordation.

2. Special Requirement for Homeowners' and Other Associations. For all structural BMPs required pursuant to this ordinance and that are to be or are owned and maintained by a homeowners' association, property owners' association, or similar entity, the required operation and maintenance agreement shall include all of the following provisions:
  - a) Acknowledgment that the association shall continuously operate and maintain the stormwater control and management facilities;
  - b) Establishment of an escrow account, which can be spent solely for sediment removal, structural, biological or vegetative replacement, major repair, or reconstruction of the structural BMPs;

If structural BMPs are not performing adequately or as intended or are not properly maintained, the Town, in its sole discretion, may remedy the situation, and in such instances the Town shall be fully reimbursed from the escrow account. Escrowed funds may be spent by the association for sediment removal, structural, biological or vegetative replacement, major repair, and reconstruction of the structural BMPs, provided that the Town Administrator or his/her designated Stormwater Administrator shall first consent to the expenditure.

- c) Both developer contribution and annual deposits for future use of “sinking funds” shall fund the escrow account. Prior to plat recordation or issuance of construction permits, whichever shall first occur, the developer shall pay into the escrow account an amount equal to fifteen per cent (15%) of the initial construction cost of the structural BMPs;

Two-thirds (2/3) of the total amount of sinking fund budget shall be deposited into the escrow account within the first five (5) years and the full amount shall be deposited within ten (10) years following initial construction of the structural BMPs.

Funds shall be deposited each year into the escrow account to cover the cost of maintenance. A portion of the annual assessments of the association shall include an allocation into the escrow account. Any funds drawn down from the escrow account shall be replaced in accordance with the schedule of anticipated work used to create the sinking fund budget.

- d) The percent of developer contribution and lengths of time to fund the escrow account may be varied by the Town depending on the design and materials of the stormwater control and management facility;
- e) Granting to the Town a right of entry to inspect, monitor, maintain, repair, and reconstruct structural BMPs;
- f) Allowing the Town to recover from the association and its members any and all costs the Town expends to maintain or repair the structural BMPs or to correct any operational deficiencies. Failure to pay the Town of its expended costs, after forty-five (45) days written notice, shall constitute a breach of the agreement;

The Town shall thereafter be entitled to bring an action against the association and its members to pay, or foreclose upon the lien hereby authorized by the agreement against the property, or both, in case of a deficiency. Interest, collection costs, and attorney fees shall be added to the recovery.

- g) A statement that this agreement shall not obligate the Town to maintain or repair any structural BMPs, and that the Town shall not be liable to any person for the condition or operation of structural BMPs;
- h) A statement that this agreement shall not in any way diminish, limit, or restrict the right of the Town to enforce any of its ordinances as authorized by law; and
- i) A provision indemnifying and holding harmless the Town for any costs and injuries arising from or related to the structural BMP, unless the Town has agreed in writing to assume the maintenance responsibility for the BMP and has accepted dedication of any and all rights necessary to carry out that maintenance.

### **310. Inspection Program**

Inspections and inspection programs by the Town may be conducted or established on any reasonable basis, including but not limited to routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to, reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in BMPs; and evaluating the condition of BMPs.

If the owner or occupant of any property refuses to permit such inspection, the Stormwater Administrator shall proceed to obtain an administrative search warrant pursuant to G.S. §15-27.2 or its successor. No person shall obstruct, hamper or interfere with the Stormwater Administrator while carrying out his or her official duties.

### **311. Performance Security for Installation and Maintenance**

1. The Town may, at its discretion, require the submittal of a performance security or bond with surety, cash escrow, letter of credit or other acceptable legal arrangement prior to issuance of a permit in order to ensure that the structural BMPs are (1) installed by the permit holder as required by the approved stormwater management plan, and/or (2) maintained by the owner as required by the operation and maintenance agreement. This requirement may be instituted in addition to and in conjunction with other performance security or bond requirements the Town may require in conjunction with a subdivision or development plan.
2. The amount of an installation performance security shall be the total estimated construction cost of the BMPs approved under the permit, plus twenty-five percent (25%).
3. The amount of a maintenance performance security shall be determined based on the type of BMP and a projected annual maintenance cost as recorded in the maintenance agreement.
4. Uses of Performance Security.
  - a) *Forfeiture Provisions:* The performance security shall contain forfeiture provisions for failure, after proper notice, to complete work within the time specified, or to initiate or maintain any actions which may be required of the applicant or owner in accordance with this ordinance, approvals issued pursuant to this ordinance, or an operation and maintenance agreement established pursuant to this ordinance.
  - b) *Default:* Upon default of the owner to construct, maintain, repair and, if necessary, reconstruct any structural BMP in accordance with the applicable permit or operation and maintenance agreement, the Stormwater Administrator shall obtain and use all or any portion of the

security to make necessary improvements based on an engineering estimate.

Such expenditure of funds shall be made after requesting the owner to comply with the permit or maintenance agreement. In the event of a default triggering the use of installation performance security, the Town shall not return any of the unused deposited cash funds or other security which shall be retained for maintenance.

- c) *Costs in Excess of Performance Security:* If the Town takes action upon such failure by the applicant or owner, it may collect from the applicant or owner for the difference, should the amount of the reasonable cost of such action exceed the amount of the security held.
- d) *Refund:* Within sixty (60) days of the final approval, the installation performance security shall be refunded to the applicant or terminated, with the exception of any amount attributable to the cost (plus 25%) of landscaping installation and ongoing maintenance associated with the BMPs covered by the security. Any such landscaping shall be inspected one (1) year after installation with replacement for compliance with the approved plans and specifications and, if in compliance, the portion of the financial security attributable to landscaping shall be released.

### **312. Notice to Owners**

1. Deed Recordation and Indications On Plat. The applicable operations and maintenance agreement, including but not limited to conservation easement, or dedication and acceptance into public maintenance, pertaining to every structural BMP shall be referenced on the final plat and shall be recorded with the County Register of Deeds upon final plat approval.

If no subdivision plat is recorded for the site, then the operations and maintenance agreement, or conservation easement, or dedication and acceptance into public maintenance, {whichever is applicable] shall be recorded with the County Register of Deeds so as to appear in the chain of title of all subsequent purchasers under generally accepted searching principles.

2. Signage. For homeowners and other associations, and where else deemed appropriate for the compliance of this ordinance, the Stormwater Administrator may require a structural BMPs to be posted with a conspicuous sign stating who is responsible for required maintenance and annual inspection. The sign shall be maintained so as to remain visible and legible.
3. Records of Installation and Maintenance Activities. The owner of each structural BMP shall keep records of inspections, maintenance, and repairs for at least five (5) years from the date of creation of the record and shall submit the same upon reasonable request to the Stormwater Administrator.

Every structural BMP installed pursuant to this ordinance shall be made accessible for adequate maintenance and repair in accordance with the maintenance agreement, including, but not limited to a maintenance easement. If a maintenance easement is provided then it shall be recorded and its terms shall specify who may make use of the easement and for what purposes.

### **313. Illicit Municipal Discharges and Connections**

The Federal Phase II rule specifies that local communities shall prohibit any discharge to a municipal separate storm **unless it:**

1. Consists of a discharge pursuant to an NPDES permit; or
2. Consists of a discharge from fire fighting activities; or
3. Consists of a discharge in any of the following categories, *and* the operator of the small MS4 has not identified that category as a significant contributor of pollutants to its small MS4:
  - Water line flushing;
  - Landscape irrigation;
  - Diverted stream flows;
  - Rising ground waters;
  - Uncontaminated ground water infiltration;
  - Uncontaminated pumped ground water;
  - Discharges from potable water sources;
  - Foundation drains;
  - Air conditioning condensation (commercial/residential);
  - Irrigation waters;
  - Springs;
  - Water from crawl space pumps;
  - Footing drains;
  - Lawn watering;
  - Individual residential car washing and charity car washing;
  - Flows from riparian habitats and wetlands;
  - De-chlorinated swimming pool discharges; and
  - Street wash water.

### **314. Other Illicit Discharges**

No person shall cause or allow the discharge, emission, disposal, pouring, or pumping directly or indirectly to any stormwater conveyance, the waters of the State, or upon the land in manner and amount that the substance is likely to reach a stormwater conveyance or the waters of the State.

Prohibited substances include but are not limited to: oil, anti-freeze, chemicals, pet feces or animal waste, paints, garbage, and litter, or any liquid, solid, gas, or other substance, other than

stormwater, provided that non-stormwater discharges associated with the following activities are allowed, **provided** that they do not significantly impact water quality:

- Water line flushing;
- Landscape irrigation;
- Diverted stream flows;
- Rising ground waters;
- Uncontaminated ground water infiltration;
- Uncontaminated pumped ground water;
- Discharges from potable water sources;
- Foundation drains;
- Air conditioning condensation (commercial/residential);
- Irrigation waters;
- Springs;
- Water from crawl space pumps;
- Footing drains;
- Lawn watering;
- Individual residential car washing and charity car washing;
- Flows from riparian habitats and wetlands;
- De-chlorinated swimming pool discharges;
- Street wash water;
- Flow from fire fighting activities; and
- Other non-stormwater discharges for which a valid NPDES discharge permit has been approved and issued by the State of North Carolina, and provided that any such discharges to the municipal separate storm sewer system shall be authorized by the Town.

### **315. Illicit Connections**

1. Connections to a stormwater conveyance or stormwater conveyance system that allow the discharge of non-stormwater, other than the exclusions described in section above, are unlawful. Prohibited connections include, but are not limited to: floor drains, waste water from washing machines or sanitary sewers, wash water from commercial vehicle washing or steam cleaning, and waste water from septic systems.
2. Where such connections exist in violation of this section and said connections were made prior to the adoption of this provision or any other ordinance prohibiting such connections, the property owner or the person using said connection shall remove the connection within one (1) year following the effective date of this ordinance. However, the one-year grace period shall not apply to connections which may result in the discharge of hazardous materials or other discharges which pose an immediate threat to health and safety, or are likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat.

3. Where it is determined that said connection: i) May result in the discharge of hazardous materials or may pose an immediate threat to health and safety, or is likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat; or ii) Was made in violation of any applicable regulation or ordinance, other than this section; the Stormwater Administrator shall designate the time within which the connection shall be removed. In setting the time limit for compliance, the Stormwater Administrator shall take the following into consideration:
  - The consequences of delay,
  - The potential harm to the environment, to the public health, and to public and private property, and
  - The cost of remedying the damage.

### **316. Spills**

1. Spills or leaks of polluting substances released, discharged to, or having the potential to be released or discharged to the stormwater conveyance system, shall be contained, controlled, collected, and properly disposed. All affected areas shall be restored to their preexisting condition.
2. Persons in control of the polluting substances immediately prior to their release or discharge, and persons owning the property on which the substances were released or discharged, shall immediately notify the Town of the release or discharge, as well as making any required notifications under State and Federal law.
3. Notification shall not relieve any person of any expenses related to the restoration, loss, damage, or any other liability which may be incurred as a result of said spill or leak, nor shall such notification relieve any person from other liability which may be imposed by State or other law.

### **317. Nuisances**

1. The owner of each stormwater BMP, whether structural or non-structural BMP, shall maintain it so as not to create or result in a condition that creates a potential hazard or nuisance to the health, safety and welfare of the general public.
2. Illicit discharges and illicit connections which exist within the Town of Montreat jurisdictions, are hereby found, deemed, and declared to be dangerous or prejudiced to the public health or public safety and are found, deemed, and declared to be public nuisances and shall be abated.

### **318. Enforcement and Violations.**

1. Authority to Enforce. The provisions of this ordinance shall be enforced by the Stormwater Administrator, his or her designee, or any authorized agent of

Town. Whenever this section refers to the Stormwater Administrator, it includes his or her designee and any authorized agent of the Town.

2. Violation Unlawful. Any failure to comply with applicable requirements, prohibitions, standards, or limitations imposed by this ordinance, or the terms or conditions of any permit, maintenance agreement, or other development or redevelopment approval or authorization granted pursuant to this ordinance, is unlawful and shall constitute a violation of this ordinance and is subject to the same civil or criminal penalties as other zoning violations, with each day that a violation continues constituting a separate offense.
3. Responsible Persons/Entities. Any person who erects, constructs, reconstructs, alters (whether actively or passively), or fails to erect, construct, reconstruct, alter, repair or maintain any structure, BMP, practice, or condition in violation of this ordinance shall be subject to the remedies, penalties, and/or enforcement actions in accordance with this section.

Persons subject to the remedies and penalties set forth herein may include any architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that results in or constitutes a violation of this ordinance, or fails to take appropriate action, so that a violation of this ordinance results or persists; or an owner, any tenant or occupant, or any other person, who has control over, or responsibility for, the use or development of the property on which the violation occurs.

4. Person Maintaining Condition Resulting In or Constituting Violation. An architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that constitutes a violation of this ordinance, or fails to take appropriate action, so that a violation of this ordinance results or persists.
5. Responsibility For Land or Use of Land. The owner of the land on which the violation occurs, any tenant or occupant of the property, any person who is responsible for stormwater controls or practices pursuant to a private agreement or public document, or any person, who has control over, or responsibility for, the use, development or redevelopment of the property.
6. Remedies and Penalties. The remedies and penalties provided for violations of this ordinance, whether civil or criminal, shall be cumulative and in addition to any other remedy provided by law, and may be exercised in any order and can include:
  - a) *Withholding of Certificate of Occupancy:* The Stormwater Administrator or other authorized agent may refuse to issue a certificate of occupancy for the building or other improvements constructed or being constructed on the site and served by the stormwater practices in question until the applicant or other responsible person has taken the remedial

measures set forth in the notice of violation or has otherwise cured the violations described therein.

- b) *Disapproval of Subsequent Permits and Development Approvals:* As long as a violation of this ordinance continues and remains uncorrected, the Stormwater Administrator or other authorized agent may withhold, and the Town Planning and Zoning Commission or Board of Adjustment may disapprove, any request for permit or development approval or authorization provided for by this ordinance for the land on which the violation occurs.
- c) *Injunction, Abatements, etc.:* The Stormwater Administrator, with the written authorization of the Town Administrator, may institute an action in a court of competent jurisdiction for a mandatory or prohibitory injunction and order of abatement to correct a violation of this ordinance. Any person violating this ordinance shall be subject to the full range of equitable remedies provided in the General Statutes or at common law.
- d) *Correction as Public Health Nuisance, Costs as Lien, etc.:* If the violation is deemed dangerous or prejudicial to the public health or public safety and is within the geographic limits prescribed by North Carolina G.S. § 160A-193, the Stormwater Administrator, with the written authorization of the Town Administrator, may cause the violation to be corrected and the costs to be assessed as a lien against the property.
- e) *Stop Work Order:* The Stormwater Administrator may issue a stop work order to the person violating this ordinance. The stop work order shall remain in effect until the person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation or violations described therein. The stop work order may be withdrawn or modified to enable the person to take the necessary remedial measures to cure such violation or violations.
- f) *Civil Penalties:* Violation of this ordinance may subject the violator to a civil penalty to be recovered in a civil action in the nature of a debt if the violator does not pay the penalty within thirty (30) days after notice of the violation is issued by the Stormwater Administrator or his/her designee. Civil penalties may be assessed up to the full amount of penalty to which the Town is subject for violations of its Phase II Stormwater permit up to \$500.
- g) *Criminal Penalties:* Violation of this ordinance may be enforced as a misdemeanor subject to the maximum fine permissible under North Carolina law.

## 7. Procedures.

- a) *Violations:* Whenever a violation of this ordinance occurs, or is alleged to have occurred, any person may file a written complaint in accordance with the procedures established in the Town of Montreat Code.
  
- b) *Extension of Time:* A person who receives a notice of violation and correction order, or the owner of the land on which the violation occurs, may submit to the Stormwater Administrator a written request for an extension of time for correction of the violation. On determining that the request includes enough information to show that the violation cannot be corrected within the specified time limit for reasons beyond the control of the person requesting the extension, the Stormwater Administrator may extend the time limit as is reasonably necessary to allow timely correction of the violation.

The Stormwater Administrator may grant extensions in addition to the foregoing extension if the violation cannot be corrected within the permitted time due to circumstances beyond the control of the person violating this ordinance.

The Stormwater Administrator may grant an extension only by written notice of extension. The notice of extension shall state the date prior to which correction must be made, after which the violator will be subject to the penalties described in the notice of violation and correction order.

- c) *Enforcement After Time to Correct:* After the time has expired to correct a violation, including any extension(s) if authorized by the Stormwater Administrator, the Stormwater Administrator shall determine if the violation is corrected. If the violation is not corrected, the Stormwater Administrator may act to impose one or more of the remedies and penalties authorized by this ordinance.

*Emergency Enforcement:* If delay in correcting a violation would seriously threaten the effective enforcement of this ordinance or pose an immediate danger to the public health, safety, or welfare, then the Stormwater Administrator may order the immediate cessation of a violation. Any person so ordered shall cease any violation immediately. The Stormwater Administrator may seek immediate enforcement, without prior written notice, through any remedy or penalty authorized by this article.

# MONTREAT GENERAL ORDINANCES

## CHAPTER K – ENVIRONMENT

### ARTICLE IV: HILLSIDE DEVELOPMENT

*(Adopted 06/11/2009)*

#### Section I. General Provisions.

1. Purpose. The hillside development regulations of this article shall establish guidelines for responsible land use addressing both aesthetics (the “viewscape”) and slope stability, utilizing approved methods of erosion prevention and stormwater control. Montreat contains intensely varied topography within a relatively small area, involving significant regions that transition abruptly from gentle slope to steep gradient. These factors pose unique challenges for the location and installation of structures while preserving the natural aesthetic characteristic of the Town. It has been determined that measures must be taken to ensure the stability of our hillsides while permitting continued low-impact development.
2. Scope. Except as otherwise expressly stated, the hillside development regulations of this article apply to all development within Montreat and the unincorporated areas of Buncombe County inside the extraterritorial jurisdiction of Montreat.
3. Applicability and Exemptions. The hillside development regulations of this article do not apply to any of the following development activities:
  - a) Land disturbing activities involving property with an existing slope less than forty percent (40%);
  - b) Land disturbing activities associated with the installation of water quality Best Management Practices (BMP’s) as set forth in the Stormwater Best Management Practices Manual published by the North Carolina Division of Water Quality. The BMP’s shall not affect the calculation of Approved Graded Area (AGA) if revegetation of the disturbed area is determined to adequately offset negative impacts of disturbance.
  - c) Grading and/or excavation activities undertaken exclusively for the purpose of installing a legally permitted septic leach/drainage field system. Site remediation must take place immediately following completion of land disturbing activities to replace vegetation with entirely native plantings, or a combination of at least fifty percent (50%) native and approved non-native plant species for erosion prevention and control. An erosion control plan must be submitted for approval before work commences;
  - d) Minor improvements to properties involving the addition of one hundred (100) square feet impervious surface or less, and for which no grading or building permit are required;
  - e) Activities undertaken on forestland for the production or harvesting of timber and timber products and conducted in accordance with best management practices as set

out in Forest Practice Guidelines Related to Water Quality referenced as follows:

[http://www.ncforestry.org/docs/Landowners/regulations/mgmt\\_practices.htm](http://www.ncforestry.org/docs/Landowners/regulations/mgmt_practices.htm)

- f) Activities for which a permit is required under the mining act, G.S. 74-46 et seq.:

<http://www.dlr.enr.state.nc.us/pages/miningprogram.html>

- g) Any development in which the owner has accrued a vested right. For the purposes of this Article only, a vested right is recognized if either (i) a preliminary plan has been approved by the Planning Board that meets the required specifications and standards of the Town of Montreat ordinances, Buncombe County ordinances, or (ii) a Land Disturbing Permit has been issued pursuant to a Buncombe County Soil Erosion and Sedimentation Control ordinance in effect on or before the effective date of this ordinance, and that such plan or permit remains unexpired.

A party in interest to a particular plan found to have no vested right to construct or develop on or before the effective date of this ordinance may appeal to the Town of Montreat Board of Adjustment for a hearing de novo. Such hearing shall be expedited and shall be limited to the issue of whether the landowner has a vested right to construct or develop their site under plans submitted to the effective date of this ordinance.

4. Interpretation of Certain Words or Terms. Except as specifically defined herein, all words used in this Ordinance have their customary dictionary definitions. For the purposes of this Ordinance, certain words or terms used herein are defined as follows:

- a) Words used in the present tense include the future tense. Words used in the singular include the plural, and words used in the plural include the singular;
- b) The word "shall" is always mandatory;
- c) The word "may" is permissive;
- d) The word "lot" includes the word "plot" or "parcel";
- e) The term "remediation" refers to *aesthetic remediation* as defined herein;
- f) The word "person" includes a firm, association, organization, partnership, trust company, limited liability company, or corporation as well as an individual;
- g) The terms "Department," "Office(s)," or "Zoning and Inspections" refer to the Town of Montreat Zoning and Inspections Department;
- h) The term "Planning Commission" refers to the Montreat Planning and Zoning Commission. The terms "Town Commissioners" "Town Board of Commissioners" or "Mayor and Town Commissioners" refer to the legally constituted and elected governing body of the Town of Montreat. The term "Board of Adjustment" refers to the Zoning Board of Adjustment for the Town of Montreat.

5. Definitions.

Aesthetic remediation: A variety of measures including, but not limited to, reclamation of non-developed portions of a disturbed area through reforestation, revegetation, naturescaping or other approved methods to restore the character of an area representative of its natural state; (re)introduction of approved plant species or modification of color and/or texture of surface materials to mitigate the undesirable visual impact of specific structural elements associated with a development project.

Aggregate Visible Area (AVA): The sum, expressed in square feet, of all exposed (plane) surfaces associated with a structure. Material exhibiting a high Light Reflectance Value of greater than thirty-two percent (>32%) represents a significant impact upon the viewscape when the aggregate quantity exceeds one hundred and fifty (150) square feet. A structure located within the Hillside Development Area having existing slope of forty percent (40%) or greater, with more than one hundred and fifty (150) square feet AVA and high Light Reflectance Value finishes/materials, shall require aesthetic remediation.

Applicant: An owner or developer of a site who executes the Hillside Development Permit Application pursuant to Town of Montreat Hillside Development Ordinance.

Approved Graded Area (AGA): The maximum surface area (measured in square feet) of a proposed development site that may be graded pursuant to execution of a Hillside Development Permit. Portions of the AGA unimproved by addition of structure(s) or impervious surfaces shall be remediated before issuance of the Certificate of Occupancy.

Artificial slope: Any land disturbing activity that modifies an existing slope.

Best Management Practices (BMP): Best Management Practices (BMP's) consist of both structural and non-structural methods of preventing exposure to stormwater runoff, and provide measures designed to remove a substantial percentage of any pollutants that may be present in the stormwater stream. BMP's also treat the volume of stormwater leaving a developed site with the goal of approximating pre-construction, or natural conditions.

Cut slope: Exposed ground surface resulting from excavation of material.

Develop: Conversion of land to new service or purpose so as to make use of its resources, or to use the land for residential or commercial purposes.

Development density: The total number of primary structures permitted per unit area as modified by existing grade.

Development intensity: The permitted ratio, expressed as percentages, of unimproved (preserved) area versus developed (buildings, parking, other improvements) area.

Disturbed area: The portions of a development project that include graded areas disturbed so as to remove the natural cover in conjunction with development activities; both pervious and impervious surfaces installed and/or constructed including, but not limited to, buildings; concrete/asphalt pavement and gravel areas such as parking lots, patios, roads, and paths and artificially surfaced (e.g. recycled rubber mulch, crushed brick, etc) areas; retention structures including, but not limited to, timber, stone and masonry walls; buried tanks or cisterns, etc. Grading activities undertaken exclusively for the installation of legally permitted septic leach/drainage field systems are not regulated under the requirements of this definition.

Existing grade: The vertical elevation of the land as it exists on the adoption date of this ordinance.

Existing grade is determined as follows:

Calculation of Existing Grade. The applicant may submit calculations of the existing grade for the entire parcel or for the proposed graded area; these calculations shall be sealed by a licensed surveyor, engineer, or landscape architect. If no calculations are provided, the Town of Montreat may calculate the existing grade of any entire parcel – or portion thereof - using Buncombe County’s “Slope Tool” <http://72.250.240.51/slopetool/> or calculate the average slope of any portion of a parcel using the following formula:

$$S = \frac{.0023(I)(L)}{A}$$

- Where:
- S = Existing grade of parcel or fraction thereof, in percent
  - I = Contour interval of map in feet, with said contour intervals to be five feet or less
  - L = Total length of the contour lines within the parcel or fraction thereof, in feet
  - A = Area of the parcel or fraction thereof, in acres
  - 0.0023 = Product of two constants, one of which converts feet into acres and one of which converts a decimal fraction into a percentage

Once “S” is calculated, it shall be rounded to the nearest whole number.

The advantage of submitting calculations for existing grade within the proposed graded area may be realized by providing evidence that improvements will be limited to less steeply-sloped portions of a lot, thereby reducing restrictions placed upon development based upon existing grade.

Fill slope: Exposed ground surface resulting from deposition of material.

Finished grade: Proposed final elevation of a given lot area (surrounding a structure) subsequent to completion of development activities.

Geotechnical Assessment (GA): A comprehensive analysis of soil type(s), composition and characteristics (colluvial, cohesive or expansive, pH, water retention, etc.) conducted pursuant to proposed development of a building site.

Global Stability (GS): Geotechnical analysis of characteristics within a reinforced soil mass evaluating potential slip surfaces or failure planes that can go behind or through the reinforced soil mass. Global

Stability shall be included in assessment of all development if recommended by the consulting geotechnical engineer. The analysis takes into consideration the following factors:

- The overall geometry of the structural system installed including, but not limited to, foundation & retaining walls, footings, etc., and the slopes above and below the system.
- Loading or surcharge conditions (e.g. 250 pounds per square foot (3.65 kPa) for highway loading). Any superimposed load, with the exception of retained earth, shall be considered surcharge.
- Soil parameters (shear strength and unit weight of the soil) determined by the laboratory tests of the soil conducted as part of a geotechnical survey or assessment.
- Subsurface and surface water conditions (groundwater can have a negative effect on slope stability).

Hillside Development Area: That region inside the Town of Montreat boundaries and unincorporated areas of Buncombe County within Montreat extraterritorial jurisdiction (ETJ) with an existing slope equal to forty percent (40%) or greater.

Impervious surface: Any surface that does not allow water to percolate through, or significantly penetrate, for natural absorption by the ground within a twenty-four (24) hour period, including but not limited to: rooftops; parking/driving areas finished with asphalt, concrete, or densely-compacted gravel; patios, or pools.

Improved site: A lot or parcel that contains disturbed area(s) attributable to development activities.

Land disturbing activity: Any use of, or operations on, the land by any person or firm in residential, industrial, educational, institutional, or commercial development, including road construction and maintenance, that results in a change in the natural cover or topography.

Light Reflectance Value (LRV): A measurement used to express the percentage (0-100%) of light reflected from the surface of a material. Large exposed regions of structures with LRV greater than thirty-two percent (>32%) shall require aesthetic remediation.

Low Impact Development (LID): A term used in the United States to describe a land planning and engineering design approach to managing stormwater runoff. LID emphasizes conservation and use of on-site natural features to protect water quality.

Natural grade: The elevation of a given lot area before any land disturbing activities commence.

Naturescaping: Landscaping installed using only native plant species and materials endemic to the region.

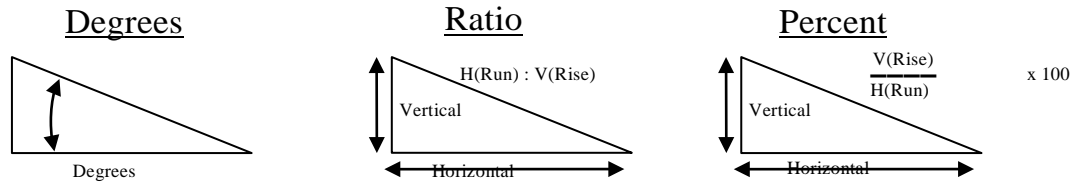
Non-conforming Improved Lot: Any improved lot in existence prior to adoption of this ordinance that, whether by aggregate graded area and/or existing impervious area, exceed the permitted limits established herein.

Reforestation: The action of renewing forest cover as by natural seeding or by the artificial planting of seeds or young trees.

Revegetation: Reintroducing entirely native, or a combination of at least fifty-percent (50%) native and approved non-native, plant species (see Appendix A) back into a disturbed area to effect aesthetic remediation and prevent potential erosion.

Slope: The extent to which a land form deviates from the perfectly horizontal as expressed in percent, degree or ratio. To ensure consistent conversion between these separate methods of expressing the extent of slope, the following explanatory table is provided as part of this definition.

### Slope Measurements



Degrees	Ratio	Percent
45°	1H:1V	100%
39°	1.25H:1V	80%
34°	1.5H:1V	67%
30°	1.75H:1V	57%
27°	2H:1V	50%
22°	2.5H:1V	40%
18°	3H:1V	33%
14°	4H:1V	25%
8.5°	6.7H:1V	15%

Viewscape: The overall aesthetic impression a view presents at any given time within commonly traveled or occupied locations inside Montreat and/or its extraterritorial jurisdiction.

#### Section II. Administration and Procedures.

1. Administration of this Ordinance. All questions arising in connection with this Ordinance shall be presented first to the Code Administrator who shall be responsible for the

day-to-day administration of this Ordinance. The Board of Adjustment shall have the authority to rule on matters of interpretation of this Ordinance and consider appeals from the decisions of the Code Administrator. Any appeal from a decision of the Board of Adjustment shall be to the courts as provided by law.

2. Review and Appeals Procedure.

- a) A Hillside Development Permit is required for all development and redevelopment on lots with an existing slope of forty percent (40%) or greater, unless exempt pursuant to this ordinance.
- b) Two (2) copies of a site plan including the following information shall be submitted:
  1. Orientation referencing north meridian;
  2. Scale of drawing; boundaries and acreage of the parcel;
  3. Location of adjacent streets and any easements;
  4. Location of existing and/or proposed structures including setbacks; structure dimensions and separation distance(s);
  5. Contour interval(s) of existing and proposed contours; and
  6. Clear graphic indication of any proposed alterations or additions
- c) The site plan and permit application shall be accompanied by results from the required Geotechnical Assessment and recommendations from a North Carolina-registered geotechnical engineer.
- d) Application and permit review fees shall be established by the Montreat Board of Commissioners and posted in the fee schedule for Town services.
- e) Plan review fees shall be double the posted amount when land disturbing activity begins before a Hillside Development Permit is issued by the Town.
- f) The Department shall review the submittal for completeness and for compliance with the requirements of this ordinance. An incomplete or nonconforming permit application will be returned to the applicant prior to review with an explanation of issues requiring resolution before plan review can be initiated.
- g) Within thirty (30) days of receipt of complete application for hillside development approval, the Department shall take action on the plan.
- h) Approval, approval with modifications, or denial of the proposed hillside development project shall be in writing. In the case of denial, the reasons for denial shall be clearly stated. The applicant may appeal the decision of the Code Administrator to the Board of Adjustment.
- i) Upon appeal, the Montreat Board of Adjustment will conduct a hearing in the nature of a quasi-judicial proceeding with all findings of fact supported by material evidence.
- j) Decisions appealing the final decision by the Board of Adjustment may be filed in Buncombe County Superior Court, to be reviewed by proceedings in the nature of

certiorari, within thirty (30) days of the final decision of the Board of Adjustment.

- k) The Code Administrator shall take action on revisions to a hillside development application which has been previously denied, within fifteen (15) days of receipt of the revised plan application for approval.
- l) If a revised application is not re-submitted within sixty (60) calendar days from the date the applicant was notified, the application shall be considered withdrawn, and a new submittal for the same or substantially the same project shall be required along with the appropriate fee and pursuant to the then current standards.
- m) Application for an amendment to an approved hillside development plan in written and graphic form may be made at any time. Until such time as an amendment is approved by the Code Administrator, it shall be unlawful to deviate from the approved plan.
- n) A hillside development permit shall become null and void if the applicant has failed to make progress on the site within six (6) months after the date of approval. The Code Administrator may grant a single, six-month extension of this time limit, for good cause shown, upon receiving a written request from the applicant before the expiration of the approved plan

### 3. Penalties for Violation.

Civil penalties may be imposed as follows:

- a) Any person who violates any of the provisions of this article, or rules or orders adopted or issued pursuant to this article, or who initiates or continues improvement to property for which a hillside development permit is required, except in accordance with the terms, conditions and provisions of an approved plan shall, upon conviction, be guilty of a misdemeanor and shall be subject to a fine not to exceed five hundred dollars (\$500.00) or imprisonment not to exceed thirty (30) days as provided by N.C.G.S. § 14-4 and § 15A-1340.23. Each day such violation continues shall constitute a separate offense pursuant to N.C.G.S. §160A-175 (g). Additional fees may be charged for remedies and enforcement of this ordinance.
- b) No penalty shall be assessed until the applicant is notified of the violation by registered or certified mail, return receipt requested, or, if reasonable attempts to contact the applicant have failed, by conspicuously posting the property in such manner as to be readily visible from an adjacent street or public thoroughfare for a period not less than ten (10) days giving notice to the violation.

A posting affidavit shall be required, including graphic record of the noticing, and filed with Zoning and Inspections Department. The notice shall list the parcel identification number and location of the property, the date, the applicant's name and a description of the violation in reasonable detail. It shall also specify the timeframe in which the violation shall be corrected, and warn that failure to correct the violation within the prescribed time period will result in the assessment of civil penalty or other enforcement action.

- c) If the violation has not been corrected within the designated time period, a civil penalty may be assessed from the date the violation is detected.
- d) Refusal to accept the notice or failure to notify the Code Administrator of a change of address shall not relieve the violator’s obligation to pay such penalty.
- e) The Code Administrator may refuse to issue a certificate of occupancy for any building or other improvements constructed or being constructed on a site for which an approved hillside development permit has been issued until the applicant has taken the remedial measures set forth in the notice of violation and cured the violations described therein.

4. Development Standards.

- a) Grading. The following requirements shall regulate the extent (see Table I) and technique of grading within a hillside development area based on the existing grade.

Table I. Approved Graded Area.

APPROVED GRADED AREA (AGA) BY SLOPE		
SLOPE	AGA	NOTE (*)
40% - 45%	40%	GA (*)
45% - 50%	35%	GA (*)
50% - 55%	30%	GA (*)
55% - 60% +	25%	GA (*)

**\*\*NOTE\*\*** Slope values shown in the above table shall be interpreted in the following manner: “40% - 45%” will include all slopes 40% up to any slope less than 45%, etc.

- (\*) A Geotechnical Assessment shall be required for lots with existing grade forty percent (40%) or greater. Investigation of Global Stability shall be required as indicated by a Geotechnical Assessment. The recommendations of a NC registered geotechnical engineer regarding a particular site may reduce the percentage AGA below the value indicated.

Applicants may request up to fifty percent (50%) increase of tabular Approved Graded Area by the Code Administrator if accompanied by a Landscape Plan detailing adequate revegetation of the disturbed area to offset negative impacts of disturbance. The increase shall only be granted in cases determined by the Code Administrator to be justified, due to inherent difficulties associated with the subject lot making adequate grading impractical or upon written recommendation of a NC registered geotechnical engineer. The additional approved graded area shall not be built upon to include impervious cover or structures.

- b) Front Yard Setback Reduction. Owners of previously-platted smaller parcels defined as 0.30 acre or less with an existing grade of forty percent (40%) or greater may request up to a fifty percent (50%) reduction in the required front yard building

setback for the associated Zoning District. Requests will be evaluated on a case-by-case basis, and permission must be evidenced by written approval bearing signatures of both the Zoning and Town Administrators.

- c) Vehicular Access Construction. Roads, streets and driveways constructed on any lot, parcel, tract of land or designated right-of-way within a hillside development area with natural grade forty percent (40%) or greater shall require consultation with a North Carolina-registered geotechnical engineer prior to land disturbing activities.

The site assessment shall include investigation for colluvial deposits and other factors indicating potential instability. Recommendations of the geotechnical engineer shall be submitted with the application for review and approval. All streets constructed shall meet the minimum street construction standards for the Town as detailed in (Insert reference to Montreat's Street Standards Ordinance).

- d) Artificial Slopes. Artificial slopes shall be reforested, revegetated, naturescaped or otherwise remediated to visually integrate disturbed areas into surrounding terrain with the purpose of maintaining a natural appearance. Artificial slopes shall not exceed a 1:1 cut and 1.5:1 fill. However, if stable exposed rock is the intended result, the cut and/or fill slope(s) may be increased with approval of the Code Administrator and supporting recommendation from a North Carolina-registered professional engineer.

Remediation shall consist of a combination of trees, shrubs and groundcover plants native to the area or taken from the list of approved species contained in Appendix A of the Town of Montreat Zoning Ordinance. A maintenance plan shall be required for remediation areas and such plan shall include provisions for replacement of dead vegetation when greater than fifty percent (50%) mortality rate occurs. Invasive plant species, as referenced in list maintained by NC State University (see link below), shall not be introduced as landscape specimens or for remediation purposes:

<http://www.ncsu.edu/goingnative/howto/mapping/inverse/index.html>

- e) Preservation of Vegetation. All trees and other natural vegetation shall be preserved in hillside development areas except within the designated Approved Graded Area. Non-native invasive species may be removed. For new development or additions, these preservation areas shall be designated on plans submitted for development approval. For existing development, aerial photographs or other methods for determining the extent of tree cover shall be utilized to enforce this requirement. Preservation areas shall be clearly designated during all land disturbing activities using protective fencing. If a property owner desires to remove trees or other protected vegetation required to be preserved in this section, he or she may submit an alternative landscape plan for consideration by the Code Administrator. The alternative landscape plan must contain:

- i. a tree survey of the property showing which trees and protected vegetation are to be removed and which will remain;

- ii. the location of any structures, driveways and other impervious surfaces; and
- iii. an explanation of the reason(s) for removal of the required trees and other protected vegetation, including a statement of how the removal supports the purposes of this section or how such removal can be mitigated consistent with the purposes of this section.

Within two (2) business days of receiving an alternative landscape plan, the Code Administrator shall approve, approve with conditions, or deny the alternative landscape plan. If the Code Administrator denies the alternative landscape plan, the reasons shall be detailed in writing. Appeals of the Code Administrator's decisions shall be made, in writing, to the Board of Adjustment within thirty (30) days of denial of the alternative landscape plan.

- f) Structure height. The maximum height of principal structures in all residential zoning districts within hillside development areas shall be limited to thirty five (35) feet. No structure shall exceed the height requirement of the underlying zoning district. For the purpose of this section, height shall be defined as the vertical distance measured from average natural grade encompassing the living areas of a structure to the highest point of its roofline, or from the top of the parapet or roof surface for flat-roofed structures. Carports, garages, decks and other non-inhabited additions to structures that may increase the building footprint are not included in calculation of average natural grade.
- g) Light Reflectance Value (LRV). Large exposed regions of structures greater than one hundred and fifty square feet (>150SF) with LRV greater than thirty-two percent (>32%) shall require aesthetic remediation. Building finish and trim materials possessing muted colors, natural tones and textures representative of the structure's surroundings will minimize the visual impact within wooded areas.
- h) Existing Non-Conformities. Non-conforming improved lots in existence prior to adoption of this ordinance that violate the minimum provisions for AGA and/or maximum impervious area, shall be combined with contiguous lots in the same ownership prior to further development and evaluated for compliance with the minimum provisions of this ordinance. A twenty percent (20%) allowance shall be made for existing impervious area on improved lots within the Institutional (I) or Institutional/Residential (I/R) Districts of Montreat. If the applicant demonstrates that no possibility of combining adjacent lots exist to achieve compliance, and the maximum allowable increases available for AGA and impervious area still exceeds allowable tabular values, a variance must first be obtained from the Board of Adjustment before additional improvements are permitted for grading or increased impervious area on the property.
- i) Development Intensity. Intensity of development shall be limited as follows in hillside development areas of Montreat to preserve, to the greatest reasonable extent, the viewscape and other natural features that distinguish the Town from neighboring developed mountain regions. For the purpose of this section, "impervious ratio" shall

mean the quotient obtained from the combined gross structure footprint and other impervious surface areas on a lot, divided by the gross area of the lot or site.

Table II. Allowable Development Intensity.

MAXIMUM IMPERVIOUS RATIO/AVA			
Existing Grade	Maximum Allowable Impervious Ratio	Maximum Allowable Ratio With Bonus	Aggregate Visible Area (AVA) Permitted With High LRV (>32%)
40% - 45%	0.30	0.40	* 400 SF
45% - 50%	0.25	0.375	* 350 SF
50% - 55%	0.225	0.338	* 300 SF
> 55%	0.20	0.30	< * 250 SF

**\*\*NOTE\*\*** Existing grade values shown in the above table shall be interpreted in the following manner: “40% - 45%” will include all slopes 40% up to any slope less than 45%, etc.

The maximum impervious ratio may be offset by an intensity bonus accrued through conscientious measures undertaken to mitigate the impact of improvements within hillside development areas. The symbol (\*) in column 4 of Table II indicates combined area(s) that shall require remediation to lessen the negative visual effect. “Earth berm” homes, “green” roofs, LEED, Green Globe, NC Healthy Built Home, Clear Water Contractor, and other sustainable and innovative alternatives to conventional construction practices, recognized at the national or state level to be consistent with LID project goals, will receive consideration for development intensity bonus credit as well.

- i) Intensity Bonus. An intensity bonus may be granted for each of the items listed below. A total intensity bonus of up to fifty percent (50%) of the allowable intensity may be achieved under this provision through accumulation. No intensity bonus shall permit a structure to violate requirements of the underlying zoning district or to allow development in the case of a non-conforming improved lot. Measures such as locating structures and other improvements on less steep and (environmentally or aesthetically) sensitive areas of a lot and designating a preservation easement for more sensitive regions, shall receive an intensity bonus. Less sensitive areas may include previously cleared areas, such as pastures/fields, old camp or home sites, and logging roads, provided such clearing predates June 11, 2009.

1. Grading is limited to ninety percent (90%) or less of the maximum approved graded area allowed in Table I; bonus of fifteen percent (15%);
  2. Grading of streets, access drives and driveways is located outside of slopes forty percent (40%) or greater and/or is predominately located on existing cleared areas; bonus of fifteen percent (15%);
  3. Structures and parking areas are screened by vegetation to minimize the visual impact from commonly frequented or accessible areas; bonus of fifteen percent (15 %);
  4. The Code Administrator determines that substantial stormwater best management practices are met in the proposed development, or rainwater recycling/retention features such as cisterns or rain gardens are implemented; bonus of fifteen percent (15%);
- j) Development Density. Re-combinations, re-development or newly-platted tracts undergoing development activities, or major/minor subdivisions as defined in the Subdivision Ordinance for the Town of Montreat with an existing grade of forty percent (40%) or greater shall conform to the following density table:

[CONTINUED ON FOLLOWING PAGE]

Table III. Development Density.

SLOPE %	UNITS PER ACRE	MINIMUM LOT IN ACRES
40	1.650	0.606
41	1.585	0.631
42	1.524	0.656
43	1.468	0.681
44	1.416	0.706
45	1.368	0.731
46	1.323	0.756
47	1.280	0.781
48	1.241	0.806
49	1.203	0.831
50	1.168	0.856
51	1.135	0.881
52	1.104	0.906
53	1.074	0.931
54	1.046	0.956
55	1.019	0.981
56	0.994	1.006
57	0.970	1.031
58	0.947	1.056
59	0.925	1.081
60	0.904	1.107
61	0.884	1.131
62	0.865	1.156
63	0.847	1.181

64	0.829	1.206
65	0.812	1.231