

**Town of Montreat  
Planning and Zoning Commission  
Meeting Agenda  
August 15, 2019 – 5:00 p.m.  
Walkup Building**

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**I. Call to Order**

- Welcome
- Moment of Silence/Invocation

**II. Agenda Adoption**

**III. Minute Adoption**

A. June 20, 2019 Meeting Minutes

- **Suggested Motion:** To adopt the June 20, 2019 Meeting Minutes as presented/amended

**IV. Old Business**

A. Review Draft Ordinance Revisions

B. Discussion of General Provisions Sections

**V. New Business**

A. Legislative Update – *Brief Discussion of Session Law 2019-111, Chapter 160D*

B. Connection to Public Utilities – *Discussion of current requirements regarding private wells and septic systems in R-1 and R-3 Zoning Districts*

C. Discussion of Next Topic(s)

**VI. Public Comment**

**IX. Adjournment**

**Town of Montreat  
Planning and Zoning Commission  
Meeting Minutes  
June 20, 2019 – 5:00 p.m.  
Left Bank Building**

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Board members present: Bill Roberts  
Mason Blake  
David Holcomb (acted as Chair)  
Allen Crawford  
Wade Burns  
Sally Stansill

Board members absent: Chair Bill Scheu (attended via telephone)  
Dan Dean

Town staff present: Adrienne Isenhower, Zoning Administrator  
Angie Murphy, Town Clerk

Five members of the public were present. Vice-Chair David Holcomb called the meeting to order at 5:05 p.m. and led the group in a moment of silence.

**Agenda Approval**

Mr. Burns would like to make the first item of Old Business “setback discussion continued” and the second item of business “review of draft ordinance revisions”. Mr. Holcomb suggested postponing items under New Business until the whole Board is present. Mr. Holcomb suggested that this evening the Board review the redline changes from last month and be ready to adopt next month. Mr. Blake moved to adopt the agenda as so amended. Mr. Burns seconded and the motion carried 6/0.

**Meeting Minutes Adoption**

Mr. Blake passed out three revisions to the May 16<sup>th</sup> Meeting Minutes and reviewed them for the Board. Mr. Burns asked for a comment that he made be struck from the minutes as well. Mr. Burns moved to approve the May 16 minutes as so amended. Mr. Crawford seconded and the motion carried 6/0.

**Presentation – Former Mayor Letta Jean Taylor**

Former Mayor Letta Jean Taylor stated that ordinances were adopted in 1985 and prior to that Mountain Retreat Association was in charge of the ordinances. Several documents guided the Council at that time in its development and adoption of the planning and zoning portions of the ordinances: 160a General Statutes, the Montreat Tomorrow Report, the Comprehensive Plan which was adopted in 2008, the General Ordinances which were adopted in 1990, the Zoning Ordinances

which were adopted in 1999, the Capital Improvement Plan and the Greenspace Agreement. The General Statutes stated that the ordinances must be reasonable and of public interest and consistent with the Comprehensive Plan that was adopted by the Town. Mrs. Taylor served on the Board of Adjustment for many years and she heard numerous variances. The Council asked for help from Land of Sky Regional Council in drafting the ordinances. Early homes were placed wherever on lots so front yard setbacks became an issue for the Town. Mrs. Taylor stressed that the Council was creating ordinances that were fair but consistent.

Mrs. Taylor briefly mentioned the reason why private septic and water in the ETJ is not allowed. The Health Department came and spoke to the Council and stated that if one owner were the first to build that owner could prevent neighbors from building based on the placement of the first owner's septic and water systems. It was thought to be fairer in the long run if everyone would have the opportunity to build.

Steep slopes have also been a controversial issue. Montreat has experienced a lot of slides against homes and on roads. Most of the lots remaining available for new construction are on very steep slopes and that is why the Council addressed steep slopes in the ordinances.

Mrs. Taylor stated that the Council had decided it would not make changes to the ordinances unless there were a lot of cases before the Board of Adjustment. There have been only 20 changes to the Zoning Ordinance since it was adopted.

General Statute 160a-383 speaks to the zoning regulations purposes: public health, safety and general welfare. These statues helped in developing the ordinances in 1999. Mrs. Taylor stated that she believes the current Planning and Zoning Commission should think about its vision for Montreat and also what Montreat will look like in 20 years. She stated that while rewriting the Zoning Ordinance the Council kept the Mission Statement at the forefront of their minds. Mrs. Taylor read the Mission Statement for those in attendance.

Mr. Holcomb asked Mrs. Taylor what she would tweak if she were on this current Planning and Zoning Commission. Mrs. Taylor stated that as people retire here the conditional use needs should be looked at more in depth. The subdivision ordinance should also be reviewed.

### **Old Business**

- A. **Setback Discussion (continued):** At that last meeting Mrs. Isenhower and Mr. Scheu felt there was a consensus towards not changing the setbacks generally, but they wanted to revisit that situation. Mr. Blake stated that it was not a reluctance to change setbacks but more a feeling that he did not have enough information to make a decision at that time. Mrs. Isenhower put together a comparison sheet of nearby Towns/Communities with respect to their setback limits

with the Town of Montreat. Mr. Scheu stated that Montreat's setback limits appear to be a little lengthier than those of other communities.

Mr. Burns reviewed his documents about simplified setback and zoning ordinances that he provided at the last meeting. He felt that the documents needed a little extra clarification. Mr. Burns stated that it is important to look at the shape of the lot before considering setbacks. There was a lengthy discussion about new properties and assigning setbacks based on lot size and whether that would be conducive. Mrs. Isenhower suggested that she and Mr. Scheu would work on draft language for the next meeting.

Mr. Crawford exited the meeting at 6:28 p.m.

- B. Review Draft Ordinance Revisions: It was decided to postpone this discussion until the next meeting.

### **New Business**

- A. Discussion of General Provisions Sections: It was decided to postpone this discussion until the next meeting.
- B. Discussion of Next Topics: It was decided to postpone this discussion until the next meeting.

The next meeting will be held on Thursday July 18 at 5:00 p.m. at a location to be determined.

### **Public Comment**

Mrs. Letta Jean Taylor reminded the Planning and Zoning Commission that the function of Board of Adjustment would be to hear variances and the decisions must be made by standards written by state statute.

Commissioner Tom Widmer of 218 Tennessee Road thanked the Commission for their service. Commissioner Widmer cautioned the Commission about creating a situation that sets a precedence.

Mr. Richard DuBose of Mountain Retreat Association stated that the MRA is not in the state of mind to develop properties at this time. There are various levels of hardship: not being able to extend your kitchen is a hardship but then again not being able to build on property you bought in the 80s is another hardship all together. Mr. DuBose feels that the Commission should reflect on where some of that relief may be found.

### **Adjournment**

Mr. Blake moved to adjourn the meeting. Mr. Burns seconded and the motion carried 6/0. The meeting was adjourned at 6:38 p.m.

**Planning and Zoning Commission  
Meeting Minutes  
June 20, 2019**

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Bill Scheu, Chair

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Angie Murphy, Town Clerk

# **Draft Changes**

## **Dimensional Requirements Section 701-705 and Section 710**

701 R-1 Residential Districts.

701.1 Purpose. This Zoning District is established to protect areas in which the principal use of the land is for low density, single- and two-family dwellings as well as for the related recreational facilities normally required to provide for an orderly and attractive residential area. Any use, which, because of its characteristics, would interfere with the development of or be detrimental to the residential nature if the area is excluded.

701.2 Permitted Uses. See Section 700.

701.3 Conditional Uses. See Section 700 and Article VIII.

701.4 Minimum Lot Area.

701.41 Ten thousand (10,000) square feet for all Single-family Dwellings.

701.42 Fifteen thousand (15,000) square feet for Two-family Dwellings.

701.43 Fifteen thousand (15,000) square feet for other uses.

~~701.5 Minimum Lot Width. Seventy five feet (75').~~

~~701.6 Minimum Lot Depth. One hundred feet (100').~~

701.7 Minimum Front Yard. Thirty feet (30').

701.8 Minimum Side Yard.

701.81 Single-family and Two-family Dwelling Units: Fifteen feet (15')

701.82 All Other Uses: Twenty-five feet (25').

701.9 Minimum Rear Yard. Twenty percent (20%) of the mean lot depth provided that rear yards on lots used for dwelling purposes need not exceed thirty five feet (35').

701.10 Maximum Building Height. Thirty-five feet (35').

701.11 Off-Street Parking and Loading Regulations. See Article IX.

701.12 Accessory Buildings. See Section 612 and 700.

701.13 Signs. See Article X.

701.14 Water System and Sewerage Disposal System Approval Required. The Zoning Official shall not issue a Certificate of Zoning Compliance for any new Structure in the R-1 Residential District unless and until the applicant provides evidence that a connection to the Town water system has been approved and a sewer service application has been approved by Metropolitan Sewerage District (MSD) of Buncombe County. For existing structures utilizing septic systems or wells approved and in service before adoption of Montreat Code of General Ordinances Chapter E – Utilities, Article I: Water & Sewer, nothing in this Section shall prohibit the continued use of such systems in accordance with provisions of the Code.

Neither addition to, nor expansion of, an existing structure within the R-1 Residential District shall be permitted that would result in an increase in the required capacity of such system(s) and subsequent modification. Owners of existing well and septic systems shall be required to connect to Town utility services when such modifications are necessary.

702 R-2 Residential Districts.

702.1 Purpose. This Zoning District is established to protect areas in which the principal use of the land is for medium density, single-family, multi-family and group dwellings as well as for the related recreational, religious, and educational facilities normally required to provide for an orderly, attractive residential area. Any use which, because of its characteristics, would interfere with the development of, or be detrimental to the residential nature of the area is excluded.

702.2 Permitted Uses. See Section 700.

702.3 Conditional Uses. See Section 700 and Article VIII.

702.4 Minimum Lot Area.

702.41 Eight thousand (8,000) square feet for all Single-family Dwellings.

702.42 Twelve thousand (12,000) square feet for all Two-family Dwellings.

702.43 Multi-family Dwellings having three (3) or more units shall have a minimum of twenty thousand (20,000) square feet, plus an additional three thousand, five hundred (3,500) square feet for each dwelling unit in excess of four (4).

702.44 Twelve thousand (12,000) square feet for all other uses.

~~702.5 Minimum Lot Width. Sixty feet (60').~~

~~702.6 Minimum Lot Depth. One hundred feet (100').~~

702.7 Minimum Front Yard. Thirty feet (30').

702.8 Minimum Side Yard.

702.81 Single-family Dwellings: Ten feet (10').

702.82 All Other Uses: Twenty feet (20').

702.9 Minimum Rear Yard. Twenty percent (20%) of the mean lot depth, provided that such rear yards used for dwellings need not exceed thirty feet (30').

702.10 Maximum Building Height. Thirty-five feet (35').

702.11 Off-Street Parking and Loading Regulations. See Article IX.

702.12 Accessory Buildings. See Section 612 and 700.

702.13 Signs. See Article X.

703 R-3 Residential District.

703.1 Purpose. This Zoning District is established to protect areas in which the principal use of the land is for low density, single- and two-family dwellings as well as for the related recreational facilities normally required to provide for an orderly and attractive residential area. Any use, which, because of its characteristics would interfere with the development of or be detrimental to the residential nature of the area is excluded. The R-3 Residential District is similar to the R-1 District except that minimum lot sizes are increased due to the limited availability of Town services and the environmentally sensitive nature of the land within these outlying regions.

703.2 Permitted Uses. See Section 700.

703.3 Conditional Uses. See Section 700 and Article VIII.

703.4 Minimum Lot Area.

703.41 Twenty thousand (20,000) square feet for all Single-family Dwellings.

703.42 Thirty thousand (30,000) square feet for Two-family Dwellings.

703.43 Thirty thousand (30,000) square feet for all other uses.

~~703.5 Minimum Lot Width. Seventy-five feet (75').~~

~~703.6 Minimum Lot Depth. One hundred feet (100').~~

703.7 Minimum Front Yard. Thirty feet (30').

703.8 Minimum Side Yard.

703.81 Single-family and Two-family Dwelling units: Fifteen (15) feet.

703.82 All Other Uses: Twenty-five (25) feet.

703.9 Minimum Rear Yard. Twenty percent of the mean lot depth provided that rear yards on lots used for dwelling purposes need not exceed thirty-five feet.

703.10 Maximum Building Height. Thirty-five feet (35').

703.11 Off-Street Parking and Loading Regulations. See Article IX.

703.12 Accessory Buildings. See Section 612 and 700.

703.13 Signs. See Article X.

703.14 Water System and Sewerage Disposal System Approval Required. The Zoning Official shall not issue a Certificate of Zoning Compliance for any new Structure in the R-3 Residential District unless and until the applicant provides evidence that a connection to the Town water system has been approved and a sewer service

application has been approved by Metropolitan Sewerage District (MSD) of Buncombe County. For existing structures utilizing septic systems or wells approved and in service before adoption of Montreat Code of General Ordinances Chapter E – Utilities, Article I: Water & Sewer, nothing in this Section shall prohibit the continued use of such systems in accordance with provisions of the Code. Neither addition to, nor expansion of, an existing structure within the R-3 Residential District shall be permitted that would result in an increase in the required capacity of such system(s) and subsequent modification. Owners of existing well and septic systems shall be required to connect to Town utility services when such modifications are necessary.

704 I/R Institutional/Residential District.

704.1 Purpose. The purpose of the Institutional/Residential Zoning District is to provide for a zone of transition between purely residential and purely institutional Districts or to serve as a residential District to accommodate a mixture of residential, office, and institutional uses in conditions of good health and safety, and to provide for protected property values in areas which are predominately residential in character.

704.2 Permitted Uses. See Section 700.

704.3 Conditional Uses. See Section 700 and Article VIII.

704.4 Minimum Lot Area.

704.41 Single-family Dwellings. Six thousand (6,000) square feet.

704.42 Two-family Dwellings. Ten thousand (10,000) square feet.

704.43 Multi-family Dwellings. Fifteen thousand (15,000) square feet plus three thousand (3,000) square feet for each dwelling unit in excess of two (2).

704.44 Ten thousand (10,000) square feet for all other uses.

~~704.5 Minimum Lot Width.~~

~~704.51 Single family Dwellings. Sixty five feet (65').~~

~~704.52 Two family Dwellings. Eighty feet (80').~~

~~704.53 Multi family Dwellings. One Hundred feet (100').~~

~~704.54 Other uses. One Hundred feet (100') at front Building line.~~

~~704.6 Minimum Lot Depth. One Hundred feet (100').~~

704.7 Minimum Front Yard. Twenty-five feet (25').

704.8 Minimum Side Yard.

704.81 Interior Side. Twelve feet (12').

- 704.82 Street side at corner lot. Seventeen and one-half feet (17.5').
- 704.9 Minimum Rear Yard. Twenty-five feet (25').
- 704.10 Maximum Building Height. Forty feet (40'). All proposed Buildings, other than single family, must be approved by the authority having jurisdiction for fire code enforcement. Structures over thirty five feet (35') will require special fire protection systems.
- 704.11 Off-Street Parking and Loading Regulations. See Article IX.
- 704.12 Screening Regulations. It shall be the responsibility of the property owner or lessee to provide the following screening measures:
- 704.121 Like or similar uses abutting each other in different Districts: None.
- 704.122 Unlike or dissimilar uses abutting each other in same or different Districts: Six foot (6') high closed fence or evergreen vegetation of sufficient density to serve the purpose of a solid fence.
- 704.13 Signs. See Article X.
- 705 I – Institutional.
- 705.1 Purpose. The Institutional Zoning District is established to permit certain institutional uses as defined in Article V, Definitions, Educational Facility.
- 705.2 Permitted Uses. See Section 700 and Article V, Definitions, Educational Facility.
- 705.3 Conditional Uses. See Section 700 and Article VIII.
- 705.4 Minimum Lot Area. Seven thousand five hundred (7,500) square feet.
- ~~705.5 Minimum Lot Width. Seventy five feet (75').~~
- ~~705.6 Minimum Lot Depth. One hundred feet (100').~~
- 705.7 Yard Requirements.
- 705.71 Adjacent lots within the Institutional District shall have no front, side, or rear yard requirements except that a twenty five foot (25') Building setback shall be required from the right-of-way lines of any adjacent streets.
- 705.72 Lots within the Institutional District and abutting a different Zoning District shall be required to provide a twenty five foot (25') side, rear, and/or front yard on the perimeter facing the different Zoning District.

710 Lot Requirements Summary Table.

Zoning District and Use	Minimum Lot Dimensions			Minimum Yard/Setback		
	Size (sq. ft.)	Width (feet)	Depth (feet)	Front (feet)	Side (feet)	Rear (feet)
<b>R-1</b>						
Single Family, Group	10,000	75	100	30	15	<u>20% mean lot depth</u> **
Two Family	15,000	75	100	30	15	<u>20% mean lot depth</u> **
Other uses	15,000	75	100	30	25	<u>20% mean lot depth</u> **
<b>R-2</b>						
Single Family, Group	8,000	60	100	30	10	<u>20% mean lot depth</u> **
Two Family	12,000	60	100	30	10	<u>20% mean lot depth</u> **
Multifamily*	20,000	60	100	30	20	<u>20% mean lot depth</u> **
Other uses	12,000	60	100	30	20	<u>20% mean lot depth</u> **
<b>R-3 (septic)</b>						
Single Family	20,000	75	100	30	15	<u>20% mean lot depth</u> **
Two Family	30,000	75	100	30	15	<u>20% mean lot depth</u> **
Other uses	30,000	75	100	30	25	<u>20% mean lot depth</u> **
<b>I/R</b>						
Single Family	6,000	65	100	25	12/17.5	25
Two Family	10,000	80	100	25	12/17.5	25
Multifamily***	15,000	100	100	25	12/17.5	25
Other uses	10,000	100	100	25	12/17.5	25
					interior/corner	
<b>I</b>						
All permitted uses	7,500	75	100	N/A - 25' from street right-of-way and when adjacent to a different Zoning District		

\*Footnote 1: For each unit in excess of four, an additional 3,500 sq. ft. is required per unit.

\*\*Footnote 2: Minimum rear yard is 20% of the mean lot depth and less than or equal to 35' in R-1 and R-3, or less than or equal to 30' in R-2 for residential uses.

\*\*\*Footnote 3: For each unit in excess of two, an additional 3,000 sq. ft. is required per unit.

Footnote 4: Side and/or rear yard setbacks are 10 feet for any lot abutting the Woodland or Conservation Districts or a Greenspace area.

# **Draft Changes**

## **Front Yard Requirements Section 615**

## **Nonconformities Section 616**

- 2) Expansion of, or addition to, decks and other appurtenant structures beyond what is deemed necessary by the Zoning Official to provide reasonable accommodation for accessibility shall not be permitted.
- 3) Accessibility improvements designed and sited to occupy a portion of street right-of-way fronting the property served are also subject to review for Administrative Approval by the Zoning Official and Town Administrator prior to application for the associated construction permits
- 4) The applicant must provide the minimum documentation in accordance with U.S. Department of Justice guidelines under the Fair Housing Act, which verifies the associated disability or medical condition(s) justify the need to modify provisions of the zoning ordinance.
- 5) The applicant may apply for a conditional use permit if requesting reasonable accommodation for individuals with disabilities.

613 Corner Lots. Any Structure on any corner lot shall comply with the minimum setback (front yard) requirements of the street which it faces, and shall comply with fifty percent (50%) of the minimum front yard setback requirements on any other street which the corner lot abuts. The yard opposite the designated front yard shall meet the minimum rear yard requirements and the remaining yard shall meet the minimum side yard requirements.

Where a Structure faces a corner formed by two (2) streets having different setback requirements, the Structure shall comply with the more restrictive requirements. In case of doubt as to which street a Structure faces, or if a Structure is built so as not to face any street, the Zoning Official shall determine which setback, side yard and rear yard requirements apply.

614 Double Frontage Lots. On lots having frontage on two streets, but not located on a corner, the minimum front yard shall be provided on each street in accordance with the provisions of this Ordinance. On lots having frontage on more than two streets, the minimum front yard shall be provided in accordance with the regulations set forth in this Ordinance on at least two of the street frontages. The minimum front yard on the other frontage or frontages may be reduced along the other streets in accordance with the side yard requirements of the Zoning District.

615 Special Front Yard Requirements in Developed Areas. The setback requirements of this Ordinance shall not apply to any lot where the average front setback on already built upon lots ~~located directly adjacent to located wholly or in part within the same block and Zoning District~~ and fronting on the same side of the street as such lot, is less than the minimum required setback. In such cases, the setback on such a lot may be less than the required setback but not less than the average of the existing setbacks for the two (2) lots

located on each side of the subject lot on the developed lots. However, in no case shall front setbacks be less than fifteen feet (15').

616 Non-Conformities. Any ~~non-conforming~~ use, ~~Structure~~, or lot which lawfully existed as of November 14, 1985, the date ~~the original Section 617 was enacted, this section was originally adopted,~~ and which ~~remains non-conforming and any use, Structure or lot which has become non-conforming as a result of the enactment of the amendment to this Section, which does not meet the requirements of this Ordinance~~ may be continued or maintained ~~only in accordance with the terms of this Section~~ based on the following provisions. However, ~~this Section shall not apply to any feature for which a variance has been granted by the Zoning Board of Adjustment subsequent to November 14, 1985.~~

616.1 Non-Conforming ~~Vacant~~ Lots – Vacant and Improved.

616.11 A non-conforming vacant lot is any legally established lot upon which a lot upon which no Structure is located and which does not meet the dimensional requirements for the zoning district in which it is located, ~~but which (i) was shown on a plat or described in a deed recorded in the Office of the Register of Deeds for Buncombe County, North Carolina, before November 14, 1985, and (ii) was not in violation of any subdivision regulation of the Town of Montreat at the time the deed describing or plat showing the lot was recorded.~~ A nonconforming vacant lot which was in existence at the time of adoption of this Ordinance (add original date), may be used as a building site without regard to the dimensional requirements of the district, subject to the provisions of Section 615 above.

A nonconforming improved lot is a lot (a) upon which a structure was located at the adoption of this Ordinance (add date of ordinance) and (b) does not meet the minimum dimensional requirements for the zoning district in which it is located. Those structures and lots may continue to be used or may be expanded to the extent of its existing footprint, notwithstanding the setback requirements of this ordinance.

616.12 ~~A non-conforming vacant lot may be used for any of the uses permitted by this Ordinance in the zoning district in which it is located if the use of the lot meets the following requirements:~~

- ~~1) If a non-conforming vacant lot adjoins one or more lots in the same ownership at any time since November 14, 1985, then the provisions of this Section shall not apply to such non-conforming vacant lot until the owner of the non-conforming vacant lot combines the non-conforming vacant~~

~~lot with the adjoining lot or lots to create one lot. The intent of this Subsection is to require non-conforming lots to be combined with other lots to create conforming lots under the circumstances specified herein; and~~

- ~~2) All other minimum requirements for the zoning district in which the non-conforming vacant lot is located must be met or a variance obtained from the Zoning Board of Adjustment.~~

~~616.2 Non-Conforming Improved Lots:~~

~~616.21 A non-conforming improved lot is a lot upon which a Structure was located on November 14, 1985, but which does not meet the minimum requirements for the zoning district in which it is located. This definition includes situations where both the lot and Structure are non-conforming and where only the lot is non-conforming.~~

~~616.22 Any improvement on a non-conforming improved lot may be used, without expansion, by a conforming use or may be expanded in accordance with the following requirements:~~

- ~~1) If a non-conforming improved lot adjoins one or more lots in the same ownership at any time since November 14, 1985, then the provisions of this Section shall not apply to such non-conforming improved lot until the owner of the non-conforming improved lot combines the non-conforming improved lot with the adjoining lot or lots to create one lot. The intent of this Subsection is to require non-conforming lots to be combined with other lots to create conforming lots under the circumstances specified herein; and~~
- 2) Any expansion of any improvement on a non-conforming improved lot must comply with all other minimum requirements for the zoning district in which the non-conforming improved is located or a variance must be obtained from the Zoning Board of Adjustment.

616.3 Non-Conforming Structures on Conforming Lots:

~~616.31~~ A non-conforming Structure ~~on a conforming lot~~ is a Structure which was in existence ~~on November 14, 1985,~~ at the adoption of this ordinance (add the date), but which does not meet the minimum requirements for the zoning district in which it is located may be expanded to the extent of its existing footprint, notwithstanding the setback requirements of this ordinance.

~~but which is located on a lot which does conform to the zoning district regulations.~~

616.32 A non-conforming Structures on a conforming lot, in existence at the time of adoption of this Ordinance, may continue to be used in

and may be expanded in accordance with all other minimum requirements of this Ordinance or a variance obtained from the Zoning Board of Adjustment.

~~616.4 Non-Conforming Uses of Structures. A non-conforming use of a Structure is a use which was in existence on November 14, 1985, but which would not be permitted by the Ordinance in the zoning district in which it is located. A legally established non-conforming use of a Structure may be continued subject to the following limitations:~~

- ~~1) The non-conforming use of a Structure shall not be changed to another non-conforming use;~~
- ~~2) When a non-conforming use of a Structure has been changed to a conforming use, it may not later be used for any non-conforming use.~~
- ~~3) A non-conforming use of a Structure may be enlarged or extended only into portions of the Structure which existed at the time the use became non-conforming. No structural alterations are allowed to any Structure containing a non-conforming use except (i) where such alteration does not enlarge the Structure, or (ii) where such alteration is required by law or by an order of the Building Inspector or Fire Chief to ensure the safety of the Structure.~~

~~A non-conforming use of a Structure which is abandoned for a continuous period of one year shall not be reestablished and all subsequent uses of the Structure must be in conformance with the applicable zoning district requirements.~~

~~616.53 Maintenance and Repair of Non-Conforming Structures. In the interest of public safety and health, repairs and structural alterations to non-conforming Structures may shall be permitted. Routine maintenance of nonconforming structures shall also be permitted. Repairs and structural alterations required by law or ordered by an authorized public officer shall be permitted. Routine maintenance of non-conforming Structures shall be permitted so long as no expansion of the nonconformity occurs as a result of the maintenance.~~

~~616.51 A non-conforming Structure which is damaged by fire or natural disaster may be repaired subject to the following requirements:~~

- ~~1) The square foot area of the Structure shall not be increased;~~
- ~~2) The repair of the Structure must be completed within one year of the date of the fire or natural disaster; and~~
- ~~3) The use of the Structure after repair shall not result in a change from one non-conforming use to another non-conforming use.~~

617 Uses of Right. Uses not designated as permitted by right or subject to additional conditions, shall be prohibited. Conditional uses are permitted upon compliance with the

## Recommended to Changes to Nonconforming Provisions

616 Non-Conformities. Any use, structure, or lot which lawfully existed as of November 14, 1985, the date this section was originally adopted, , which does not meet the requirements of this Ordinance may be continued or maintained based on the following provisions.

### 616.1 Non-Conforming Lots – Vacant and Improved.

A non-conforming vacant lot is any legally established lot upon which no Structure is located and which does not meet the dimensional requirements for the district in which it is located. A nonconforming vacant lot which was in existence at the time of adoption of this Ordinance (add original date), may be used as a building site without regard to the dimensional requirements of the district, subject to the provisions of Section 615 above.

A nonconforming improved lot is a lot (a) upon which a structure was located at the adoption of this Ordinance (add date of ordinance) and (b) does not meet the minimum dimensional requirements for the district in which it is located. Those structures and lots may continue to be used or may be expanded to the extent of its existing footprint, notwithstanding the setback requirements of this ordinance.

### 616.2 Non-Conforming Structures

A non-conforming Structure is a Structure which was in existence, at the adoption of this ordinance (add the date), which does not meet the minimum requirements for the district in which it is located may be expanded to the extent of its existing footprint, notwithstanding the setback requirements of this ordinance.

Non-conforming Structures , in existence at the time of adoption of this Ordinance, may continue to be used in and may be expanded in accordance with all other minimum requirements of this Ordinance or a variance obtained from the Zoning Board of Adjustment.

### 616.3 Maintenance and Repair of Non-Conforming Structures.

In the interest of public safety and health, repairs and structural alterations to non-conforming Structures shall be permitted. Routine maintenance of nonconforming structures shall also be permitted.

# Discussion Outline

## General Provisions Sections:

**606**

**607**

**608**

**612, 612.2, 612.4**

**613**

**614**

**618**

**619**

**1400**

**628**

**629**

**606 Use** –No Building, Structure or land shall hereafter be used or occupied and no Building or Structure or part thereof shall be erected, moved or structurally altered except in conformity with the regulations of this Ordinance for the Zoning District in which it is located.

*606.1 No part of a yard, off-street parking or loading space, or other open space required in connection with any Building for the purpose of complying with this Ordinance shall be used and included as part of a yard, open space, or off-street parking or loading space similarly required for any other Building.*

*606.2 Rights-of-way or access easements shall not be considered a part of a lot or open space, or front, side, or rear yard for the purpose of meeting yard requirements.*

Points for Discussion/Suggestions:

Are these provisions necessary?

Should the language be amended?

Leave first paragraph but remove 606.1 and 606.2

**607 Lot Reduction Prohibited-** No yard or lot existing at the time of the passage of this Ordinance shall be reduced in dimension or area below the minimum requirement set herein. Yards or lots created after the effective date of this Ordinance shall meet at least the minimum requirements set by this Ordinance.

Points for Discussion/Suggestions:

**608 Every Lot Must Have Access to a Street** No Building, Structure or use of land for other than agricultural purposes shall be established on a lot within Town limits which does not have access to a dedicated and accepted public street. In the Extraterritorial Jurisdiction, no Building, Structure, or use of land for other than agricultural purposes shall be established on a lot which does not have access to a platted roadway. Access shall be a strip of land with a minimum width of twelve feet (12') connecting any lot that does not abut a street with the nearest street to said lot. Said strip shall be under the same ownership as the lot to which it provides access and connected to the nearest street or shall be an easement of record and appurtenant to the lot for which it provides access. If the street or road serving the proposed development does not meet the Town street standards, the developer shall make the necessary improvements to bring the street or road up to Town standards.

Points for Discussion/Suggestions:

What is a strip of land?

Does this allow chair lifts?

Should this language be changed or moved to another section?

Incorporate this information into the definition of driveway

Clearly define “access”

Also review definition of “accessibility feature”

Driveway - a private access way serving three or fewer lots, building sites or other divisions of land and not intended to be public ingress or egress. Road maintenance, garbage collection and snow removal are not supplied by the town to properties located on private driveways. BUILDINGS, STRUCTURES OR USE OF LAND OTHER THAN AGRICULTURAL PURPOSES SHALL ONLY BE ESTABLISHED ON LOTS WITH ACCESS TO A DRIVEWAY.

Driveway - A vehicular way, other than a street, alley or easement that provides vehicular access from a street to or through off-street parking and/or loading areas for three (3) or fewer residences.

BUILDINGS, STRUCTURES OR USE OF LAND OTHER THAN AGRICULTURAL PURPOSES SHALL ONLY BE ESTABLISHED ON LOTS WITH ACCESS TO A DRIVEWAY.

### **612 Accessory Buildings and Uses.**

#### *612.1 General Requirements.*

*1) Accessory buildings shall not be used as a dwelling unit.*

*2) In residential zoning districts, no more than two (2) accessory buildings or uses shall be permitted per lot.*

*3) Accessory buildings larger than six hundred (600) square feet including entrance and/or outside covered areas and/or exceed ten (10) feet in height at eave line shall be permitted by Conditional Use permit only.*

*4) Accessory buildings or uses must meet the minimum setbacks required by the respective zoning district. Garages shall be located only in the side or rear yards and must meet the minimum setbacks required by the respective zoning district except under the provisions found in Section 612.2.*

*5) Accessory buildings with any dimension greater than twelve feet (12') must meet the provisions of current NC State Residential Building Code.*

**612.2 Garages.** *In addition to meeting the general requirements of Section 612.1, a residential property owner may apply for a conditional use permit to build a garage within the front yard setback subject to meeting all the following conditions:*

*1) The zoning administrator determines this will reduce damage to the natural topography, trees and natural green space, or where the topography will create a hardship that would result in significant damage to the topography, trees and plant life without such relief;*

*2) The materials used, meet or exceed the quality and appearance of the principal residence when the principal residence is new;*

*3) The garage will be enclosed by an operable garage door to be maintained in good working order;*

*4) The garage doors shall be kept closed when the house is unoccupied for more than one day; and*

*5) The property owner agrees to maintain the garage and its appearance to reasonably remain in the condition it is in when completed and approved by the Building Inspector. The Zoning Administrator shall determine when this provision has been violated.*

#### Points for Discussion/Suggestions:

Do you want to allow accessory buildings to be used as dwellings?  
Is Board of Adjustment approval necessary for large buildings?

- Garages only in side or rear yards?
- Remove #5?
- CUP for Garages in Front Yard Setback? Include carports?
- Should all accessory structures be included, not just garages?

**612.4 Reasonable Accommodation** - *In addition to meeting the general requirements of Section 612.1, a property owner may request approval to erect or install accessibility features within the required yard setback, subject to meeting all the following conditions:*

- 1) *The proposed accessibility improvements shall be demonstrated to be the least possible modification of the setback(s) that provides "reasonable accommodations" within the zoning ordinance to avoid discrimination against individuals with disabilities.*
- 2) *Expansion of, or addition to, decks and other appurtenant structures beyond what is deemed necessary by the Zoning Official to provide reasonable accommodation for accessibility shall not be permitted.*
- 3) *Accessibility improvements designed and sited to occupy a portion of street right-of-way fronting the property served are also subject to review for Administrative Approval by the Zoning Official and Town Administrator prior to application for the associated construction permits*
- 4) *The applicant must provide the minimum documentation in accordance with U.S. Department of Justice guidelines under the Fair Housing Act, which verifies the associated disability or medical condition(s) justify the need to modify provisions of the zoning ordinance.*
- 5) *The applicant may apply for a conditional use permit if requesting reasonable accommodation for individuals with disabilities.*

Points for Discussion/Suggestions:

- Remove requirement for CUP?
- Discussion of legality based on FHA and ADA
- Allow by right with appropriate documentation?

"a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling." 42 U.S.C. 3604(f)(3)(B). Fair Housing Act, Americans with Disabilities Act and Rehabilitation Act of 1973.

Accommodation must be necessary and reasonable; not reasonable if it requires a fundamental alteration in nature of the zoning scheme or imposes undue financial or administrative burdens.

[https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp/reasonable\\_accommodations\\_and\\_modifications](https://www.hud.gov/program_offices/fair_housing_equal_opp/reasonable_accommodations_and_modifications)

**613 Corner Lots** - *Any Structure on any corner lot shall comply with the minimum setback (front yard) requirements of the street which it faces, and shall comply with fifty percent (50%) of the minimum front yard setback requirements on any other street which the corner lot abuts. The yard opposite the designated front yard shall meet the minimum rear yard requirements and the remaining yard shall meet the minimum side yard requirements.*

*Where a Structure faces a corner formed by two (2) streets having different setback requirements, the Structure shall comply with the more restrictive requirements. In case of doubt as to which street a Structure faces, or if a Structure is built so as not to face any street, the Zoning Official shall determine which setback, side yard and rear yard requirements apply*

Points for Discussion/Suggestions:      50% front yard setback = 15'  
 Move language to footnotes of dimensional requirements  
 Possibly require 10' setback on corner not facing street

**614 Double Frontage Lots** - *On lots having frontage on two streets, but not located on a corner, the minimum front yard shall be provided on each street in accordance with the provisions of this Ordinance. On lots having frontage on more than two streets, the minimum front yard shall be provided in accordance with the regulations set forth in this Ordinance on at least two of the street frontages. The minimum front yard on the other frontage or frontages may be reduced along the other streets in accordance with the side yard requirements of the Zoning District.*

Points for Discussion/Suggestions:      Allow reduction in setbacks on side deemed “rear”  
 Move language to footnotes of dimensional requirements  
 Require certain setback requirements on these lots

**618 Land Covenants** - *Unless restrictions established by covenants with the land are prohibited by or are contrary to the provisions of this Ordinance, nothing herein contained shall be construed to render such covenants inoperative.*

Points for Discussion/Suggestions:      Reword (example below) and move to Administration section?

It is not intended that this Ordinance repeals, abrogates, annuls, impairs, or interferes with any existing easements, covenants, deed restrictions, agreements, rules, or regulations previously adopted or issued pursuant to law. However, where this Ordinance imposes greater restrictions, the provisions of this Ordinance shall govern.

**619 Minimum Regulations.** *Regulations set forth in this Ordinance shall be minimum regulations. If the Zoning District requirements set forth in this Section are at variance with the requirements of any other lawfully adopted rules, regulations or Ordinances, the more restrictive or higher standard shall govern.*

**1400 Conflict with Other Laws.** *Whenever the regulations of this Ordinance require a greater width or size of yards, or require a greater percentage of lot to be left unoccupied, or impose other more restrictive standards than are required in or under any other ordinance or statute, the requirements of this Ordinance shall govern. Whenever the provisions of any other ordinance or statute require more restrictive standards than are required by this Ordinance, the provisions of such statute shall govern. Where this Ordinance imposes a greater restriction on the use of land or Buildings than other rules, ordinances, or regulations, the provisions of this Ordinance shall be construed to amend or repeal any other existing ordinance in the Town of Montreat.*

Points for Discussion/Suggestions:      Typical ordinance language  
 Remove one of these provisions; redundancy  
 Clarify effect of provision on local ordinances

**628 Approval for Construction in the Right of Way** - *Town rights-of-way are reserved for public purposes such as streets, street shoulders, utility lines, alleys, future street improvements, bikeways, walkways, driveway connections, drainage, and plantings for beautification. Any and all construction in public rights-of-way is prohibited without the prior written permission of the Zoning Official and the Town Administrator. At the discretion of the Zoning Official and the Town Administrator, private construction projects that produce a public benefit may be allowed in public rights-of-way (for example: a retaining wall that keeps a drainage ditch clear.) No private improvements on public rights-of-way shall be allowed which will interfere with existing or future public benefits of public rights-of-way.*

Points of Discussion/Suggestions:

**629 Driveway Connections** - *To the greatest extent practicable, and unless otherwise approved by the Town, driveway connections to public streets shall be made within the adjacent frontage area described by lines extending perpendicular from the streetside to the nearest property corners. If existing conditions or other factors, including but not limited to excessively steep gradient or stormwater control considerations pose inordinate difficulty for, or preclude, a driveway connection to the public street solely within the frontage area described above, application shall be made to the Board of Adjustment seeking a variance from the provisions stated herein. The variance requirement shall be waived if an easement is granted by the neighboring landowners(s) permitting driveway access through the grantor’s lot.*

Points for Discussion/Suggestions:

- Create driveway section with access info. From above?
- Include: emergency vehicle access, culverts, etc.
- Require a driveway permit?
- Add provision on adjacent lot encroachment (See below)

If the topography or configuration of the lot requires the driveway to encroach upon an adjacent lot, the applicant shall submit concurrence of the adjacent property owner at the time the application is submitted.