

**Town of Montreat
Planning and Zoning Commission
Meeting Agenda
October 10, 2019 – 10:00 a.m.
Walkup Building**

I. Call to Order

- Welcome
- Moment of Silence/Invocation

II. Agenda Adoption

III. Minute Adoption

- A. August 15, 2019 Meeting Minutes
- B. September 26, 2019 Meeting Minutes

IV. Old Business

- A. Review of Zoning Ordinance – General Provisions

V. New Business

- A. Discussion of Greenspace Map, Zoning Map, and Setbacks
- B. Review of Planned Unit Development/Conditional Zoning Ordinance
- C. Discussion of Next Topics

VI. Public Comment

IX. Adjournment

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

Board members present: Bill Scheu
Bill Roberts
Mason Blake
Dan Dean
Allen Crawford
Wade Burns
Sally Stansill

Board members absent: David Holcomb

Town staff present: Adrienne Isenhower, Zoning Administrator
Alex Carmichael, Town Administrator

Three members of the public were present. Mr. Scheu called the meeting to order at 5:01 p.m., and led the group in a moment of silence.

Agenda Approval

Mr. Blake moved to adopt the agenda as presented. Mr. Roberts seconded and the motion carried 6-0.

Meeting Minutes Adoption

Ms. Stansill moved to adopt the June 20, 2019 Meeting Minutes as presented. Mr. Blake seconded and the motion carried 6-0.

Staff Communications

Adrienne Isenhower discussed new staffing arrangements with Land of Sky. A new planner is slated to start at the end of September and he is well versed in the area of planning. This individual will be able to devote more time to the ordinance review. Mr. Scheu suggested meeting more than once a month, perhaps beginning in October, to stay focused on the review process.

Old Business

- A. Review Draft Ordinance Revisions: There was a brief review of the draft ordinance revisions with some minor wordsmithing. Mr. Blake was then assigned the drafting of the PUD (Planned Unit Development) Ordinance. Mr. Roberts discussed the dangers of short term rentals. Mr. Crawford talked about the complications of parking. Mr. Dean brought up some concerns

regarding the septic tanks/wells verbiage. Mrs. Isenhower stated that she has been working with Environmental Health, who regulates septic tanks and wells, and she received some information today that is contradictory to Montreat's ordinance. Mrs. Isenhower and Mr. Carmichael will look further into this and report back at another meeting.

Mr. Scheu brought up Section 615 Special Front Yard Requirements in Developed Areas. In this section it was decided that setbacks may be reduced to the average setback of the lots directly to, on either side of, and fronting the same side of the street provided the minimum setback is fifteen feet. They then talked about if only one of the adjacent lots has an existing structure located upon it, which structure is located less than the minimum required front setback, and the other adjacent lot either has no structure located upon it or has a structure upon it which is located more than the minimum required setback from the front property line, then, for average purposes, the minimum required front setback shall be used for such other adjacent lot.

There was conversation about reinserting Non-Conforming Uses language. Mr. Dean and Mrs. Isenhower will work together to draft ordinance language for Non-Conformities.

There was a brief conversation about setback requirements but no changes occurred.

Mr. Dean made a series of punctuation and minor word changes.

The discussion of General Provision Sections will take place in September.

There was a discussion regarding the length of time a building permit may remain open.

Adjournment

Mr. Blake moved to adjourn the meeting. Mr. Burns seconded and the motion carried 6/0. The meeting was adjourned at 6:23 p.m.

Bill Scheu, Chair

Angie Murphy, Town Clerk

**Town of Montreat
Planning and Zoning Commission
Meeting Minutes
September 26, 2019 – 10:00 a.m.
Walkup Building**

Board members present: Bill Scheu
Bill Roberts
Mason Blake (by telephone)
Dan Dean
Allen Crawford (arrived at 10:23 a.m.)
Wade Burns
Sally Stansill
David Holcomb

Board members absent: None

Town staff present: Adrienne Isenhower, Zoning Administrator
Angie Murphy, Town Clerk
Stuart Bass, Regional Planner, Land-of-Sky Regional Council

Six members of the public were present. Mr. Scheu called the meeting to order at 10:01 a.m., and led the group in a moment of silence.

Agenda Approval

Mr. Dean moved to adopt the agenda as presented. Mr. Roberts seconded and the motion carried 7-0.

Meeting Minutes Adoption

Mr. Scheu announced that the minutes were pending the next meeting for approval.

Staff Communications

Adrienne Isenhower introduced Mr. Stuart Bass, the new Regional Planner with the Land-of-Sky Regional Council, who will be working with the Town of Montreat on the zoning ordinance review.

Old Business

- A. Review Draft Ordinance Revisions: Mr. Blake outlined some changes in which the reduced setbacks only refer to side yard or rear yard providing the lot is abutting the Woodland or Conservation Districts. Mrs. Isenhower will incorporate this language into the draft ordinance. Mr. Dan Dean suggested that the Commission might want more of a protection or buffer along

the Flat Creek. Mr. Blake stated that it was not the intention of the Committee to limit the buffer along Flat Creek. It was decided that Mrs. Isenhower would craft language to exclude Flat Creek section from the above reduction. Mrs. Isenhower was also asked to elaborate more on Greenspace at the next meeting. The Commission would also like to see the Greenspace maps.

Mr. Dean stated that in several of the districts there is a section entitled "Sewer System" and he wondered for consistencies sake whether it should be included in all the districts. Mrs. Isenhower is still in discussion with the department about whether we need to regulate septic tanks at all. Mr. Dean asked for further clarification about a double asterisk on page 10 of the changes: "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". Mrs. Isenhower explained the wording for Mr. Dean. It was decided to change "and less than or equal to" to "not to exceed".

Mr. Scheu moved the conversation along to the Discussion of General Provisions. The Commission discussed sections 606 and 607 and decided to make no changes. Mr. Dan Dean will wordsmith section 608 specifically with reference to "a strip of land". Sections 609-611 were discussed with no changes. Mr. Roberts asked what the status of past pulled permits are with the Town. Mrs. Isenhower said there are a lot of documents and plans in the Town Services Building. Section 612.1 deals with Accessory Buildings and Uses and after a lengthy discussion it was decided that no changes were necessary. There was no desire to change Sections 612.1(1) 612.1(2), 612.1(3), 612.1(4) or 612.1(5). The Commission discussed Section 612.2 Garages. Adrienne Isenhower pointed out that the definition of garages included carports. Provision 612.2 (3) and (4) would need to be modified to exclude carports. They would still require a conditional use permit. Section 612.4 needs some wordsmithing in the introductory paragraph. Mrs. Isenhower feels Section 612.4 is rather strict based on Federal Standards. It was decided to delete "to be demonstrated to be the least possible modification of the setback (s) that" from Section 612.4(1) while also deleting the words "zoning ordinance". Section 612.4(2) was deemed satisfactory. It was decided to delete "zoning official" from Section 612.4(3). The applicant shall verify the disability in a manner acceptable to the zoning official in Section 612.4(4). Section 612.4(5) was removed completely.

It was decided that the next meeting date will be October 10th from 10:30 – 12:30 with location to be determined.

Adjournment

Mr. Roberts moved to adjourn the meeting. Mr. Burns seconded and the motion carried 7/0. The meeting was adjourned at 11:44 p.m.

**Planning and Zoning Commission
Meeting Minutes
September 26, 2019**

Bill Scheu, Chair

Angie Murphy, Town Clerk

Recommended Changes

608. Every Lot Must Have Access to a Street. No Building, Structure or Use of land shall be established on a lot within the Town limits which does not have legal and physical vehicular 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 legal and physical vehicular access to a dedicated and accepted public Street or to a platted roadway connected to a public Street. For any lot that does not abut a public Street or, in the case of the Extraterritorial Jurisdiction for any lot that does not abut a public Street or platted roadway, no Building, Structure or Use of land shall be established on such lot unless it has a legal easement connecting such lot with a public Street, which easement must:

- 1) Have a minimum width of twelve feet (12');
- 2) Be physically passable for vehicular traffic; and
- 3) Be an easement of record and appurtenant to the lot for which it provides access.

If the Street or platted roadway providing access to a proposed development does not meet the Town street standards for public streets, the developer shall make the necessary improvements to bring the street or road up to such Town standards.

General Provisions Sections

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

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.

Greenspace Agreement Maps

After meeting returned
Robson, Mountain, Caron, (and)
72 Patton Ave.
Asheville NC 28801

BR 1443PC 145

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

REGISTERED

OFFER OF DEDICATION

'86 AUG 28 P4:20

THIS OFFER OF DEDICATION, made this 12th day of May,
1983, by and from MOUNTAIN RETREAT ASSOCIATION, a North Carolina corporation
(hereinafter referred to as "Association") to and in favor of THE TOWN OF
MONTREAT, a municipal corporation organized and existing under the laws of the
State of North Carolina (hereinafter referred to as "Town");

W I T N E S S E T H :

WHEREAS, Association has from time to time recorded in the Office of
the Register of Deeds for Buncombe County, North Carolina (hereinafter
referred to as the "Register of Deeds") various Plats of properties owned by
the Association, a schedule of said Plats being attached hereto as Exhibit "A"
and hereinafter referred to as the "Plats"; and

WHEREAS, from time to time some question has arisen as to the extent
to which road rights of way and certain additional areas shown on said Plats
may have been offered for dedication for use by the public by virtue of the
recording by Association of said Plats; and

WHEREAS, Association further wishes hereby to dedicate to Town for
the benefit of the public the road rights of way and certain additional areas
shown on said Plats and more particularly described herein, which areas are
still owned by Association, such dedication, however, being subject to the
reservations hereinafter stated;

NOW, THEREFORE, Association hereby states and declares as follows:

(1) There is attached as Exhibit "B" hereto a set of color-coded
copies of the Plats referred to in Exhibit "A" attached hereto. Each page of
said Exhibit "B" has been initialed by the President of Association and the
Mayor of Town as constituting a portion of said Exhibit "B". There is also
attached hereto as Exhibit "C" a color-coded copy of the official Town zoning
map showing said areas as to general location, Exhibit "C" also being
initialed by the President of Association and the Mayor of Town. Said Exhibits
"B" and "C" will be separately filed for record in the Office of the Register
of Deeds and in the Office of Town's Clerk.

(COLOR-CODED COPIES OF PLATS FILED IN MISCELLANEOUS
MAPS FILE)

(2) Said color-coding in solid green, red and blue has been made of those portions of said Plats designated as rights of way. Said color-codings shall signify the following dedication to use of said respectively color-coded areas by Association for the use and benefit of Town and/or the general public as follows, with the exception of any specific notations made and initialed as stated above on the individual pages constituting said Exhibit "B":

<u>Color Code</u>	<u>Permitted Uses of Rights of Way</u>
Solid Green	- area previously dedicated to public and Town for street and utility right of way purposes by recording of said MRA Plats and previously accepted and presently maintained by Town
Red	- area previously dedicated to public and Town for above purposes by recording of said MRA Plats but with no existing roads previously accepted by Town but not presently maintained by Town
Blue	- area previously dedicated to public and Town for above purposes by recording of said MRA Plats, containing existing roads and/or utilities, some of which have been previously accepted and are maintained by Town and some by adjoining property owners

The right of way of all roads shown on Exhibit "B" shall extend to the lot line of all numbered lots abutting upon such right of way in all instances where said right of way is abutted on both sides by numbered lots. Where a numbered lot does not abut on both sides of a right of way as shown on the Plats, the right of way width on the side or sides not abutting a numbered lot shall, except as otherwise noted on said Exhibit "B", be as follows:

Thirty (30) feet from center line

Assembly Drive

Twenty five (25) feet from center line

Assembly Circle
 Lookout Road
 Appalachian Way to Oklahoma Road
 Texas Road
 Community Circle
 Louisiana Road to John Knox Road
 Georgia Terrace
 Virginia Road between Assembly Drive and Mississippi Road
 Kanawha Drive from Assembly Drive to Holston Lane

Twenty (20) feet from center line

All other roads

provided, however, that in no event shall a right of way be deemed to extend into a natural stream bed except where said right of way as shown on the Plats traverses said stream bed.

(3) Said color-coding in hatched green on Exhibit "B" hereto designates areas as to which Association does not acknowledge any previous dedication by Association to Town and/or the public. Association hereby offers for dedication in perpetuity to Town and the public, including Association, said hatched green-designated areas to be used only for recreation, fishing, greenspaces and beautification and for such street, bridge and utility rights of way as Town shall deem reasonably necessary for its use or shall grant to others for such purpose; subject, however, to Association's right hereby expressly reserved to itself to use said areas for said purposes, and further provided that any changes in the present character and natural condition of said hatched green-designated areas (other than for streets, bridges and utility rights of way) shall be as determined by mutual agreement between Town and Association from time to time. In the event that Town shall undertake to make any use of said area or change in said character or condition of said hatched green-designated areas other than as above permitted, without agreement with Association, then and in such event, Association at its option may rescind and nullify this Offer of Dedication, whereupon all rights of Town and the Public under this Offer of Dedication shall cease and terminate.

(4) This Offer of Dedication is made by Association conditioned and contingent upon the adoption by Town's Council of a proposed Resolution accepting this Offer of Dedication and acknowledging that Town does not assert any interest in or ownership of the hatched yellow-designated areas shown on Exhibit "B" hereto, over which areas Association asserts sole control, ownership and right of use and transfer to others, subject only to Town's general laws, ordinances and regulations relating to land use, as the same may be in effect from time to time. In the event any portion of said proposed Resolution,

once adopted by Town's Council, is in any manner amended or rescinded by subsequent action of Town, the reverter rights reserved to Association under the foregoing Paragraph (3) shall become applicable and enforceable at the option of Association.

(5) The limitations imposed by this Offer of Dedication upon the uses and ownership of lands not dedicated hereby and presently owned by Association shall not be construed as applicable to (a) any real property owned by Association located outside the existing geographical limits of Town or (b) any real property owned by Association located within the existing geographical limits of Town and not designated in color coding on Exhibit "B" hereto.

IN WITNESS WHEREOF, Association has caused the within Offer of Dedication to be executed by its duly authorized officers the day and year first above written.

(CORPORATE SEAL)

ATTEST: Elizabeth H. Lamb
Secretary

MOUNTAIN RETREAT ASSOCIATION

By: Samuel R. Lee
President

STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

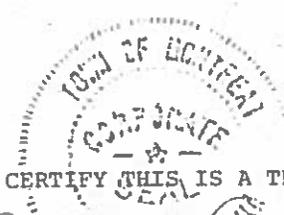
I, a Notary Public of said State and County, certify that ELIZABETH H. LAMB personally came before me this day and acknowledged that she is Secretary of MOUNTAIN RETREAT ASSOCIATION, a North Carolina corporation, and that, by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by herself as its Secretary.

WITNESS my hand and Notarial Seal, this 12th day of May, 1983.

My commission expires:
May 15, 1985

Melba C. Kasher
Notary Public

Registered August 28, 1986 at 4:20 P.M.
W.D. De Bruhl
Register of Deeds
Annet. J. ...
Deputy



I CERTIFY THIS IS A TRUE COPY OF THIS DEDICATION.

Betty J. ...
Town Clerk

Planned Unit Development Outline and Conditional Use Examples

Planned Residential Lot Development Ordinance Outline

Section 1. Definitions

- a. Development Plan
- b. Preliminary Development Plan Application
- c. Preliminary Development Plan
- d. Final Development Plan
- e. Lot

Section 2. Purpose and Intent

Section 3. Permitted Uses

Section 4. Accessory Buildings and Uses

Section 5. Conditional Uses

Section 6. Development Regulations

- a. Minimum Lot size and frontage
- b. Setbacks
- c. Minimum distances between structures
- d. Location of Accessory Buildings
- e. Maximum Height of Structures
- f. Minimum Floor Area
- g. Parking Requirements
- h. Stormwater
- i. Utilities
- j. Development standards

Section 7. Approval of Preliminary Development Plan and Tentative Zoning

- a. Preapplication conference
- b. Preliminary Development Application
 - (1) General
 - (2) Contents and Requirements
 - (3) Submittal
 - (4) Review Procedure
 - (5) Review Criteria
 - (6) Action by Town Council and Notice Requirements
 - (7) Amendment of Approved Preliminary Development Plan
- c. Final Development Plan
 - (1) Time for submittal
 - (2) Contents and Requirements
 - (3) Submittal

- (4) Review Procedure
- (5) Review Criteria
- (6) Action by Town Council and Notice Requirements
- (7) Amendment of Approved Final Development Plan

Section 8. Right of Town to Evaluate Plans and Make Recommendations for Changes

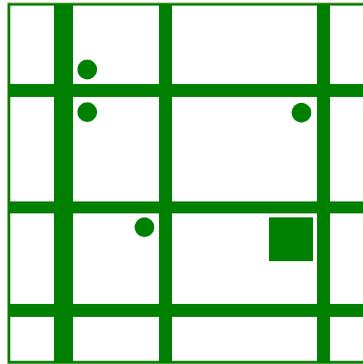
Section 9. Termination of Residential Planned Lot Development Zone

City of Greensboro
300 W. Washington St.
P.O. Box 3136
Greensboro, North Carolina
27402-3136

PLANNING DEPARTMENT

Planning Department's

**Guide to Conditional
Zoning Districts**



**Greensboro,
North Carolina**

Conditional District Zoning

WHAT IS CONDITIONAL DISTRICT ZONING?

An applicant can propose use limitations on the property or propose certain conditions to ensure compatibility between the property and surrounding neighborhood (such as landscaping beyond the minimum standards). This is called conditional zoning; a request such as this is made by applying for a conditional zoning district. **Only the property owner can apply for a rezoning to a conditional zoning district.** Conditional zoning districts have all the requirements of the corresponding general use district as well as the conditions imposed by the property owner. Once Staff has accepted a request for a conditional zoning district, it cannot be changed except at the public hearing of the Zoning Commission or City Council. Any amendments to conditions must make the conditions more restrictive or decrease the size of the property rezoned.



WORKING WITH THE PLANNING DEPARTMENT TO PROPOSE USE LIMITATIONS

IMPORTANT CONSIDERATIONS

- **Zoning regulations already required by the Development Ordinance are not appropriate conditions.**
- Whenever possible, zoning conditions must utilize common terminology from the Development Ordinance.
- To be enforceable, zoning conditions must be clear and measurable (i.e., quantitative rather than qualitative). Conditions that use vague descriptions should be avoided.
- Applicants are encouraged to meet with Staff to discuss zoning conditions prior to the submission of a rezoning application. Furthermore, draft conditions should be reviewed by Staff prior to finalizing the application.
- Staff may require revisions to zoning conditions following the submission of a rezoning application to ensure legality and enforceability.
- If zoning conditions are to be amended at a public hearing, Staff will need to receive a written copy by 12:00 pm on the Friday prior to a Zoning Commission meeting, or by 12:00 pm on the Monday prior to a City Council meeting. A full set of the conditions including any highlighted additions/deletions, must also be submitted to the Zoning Commission or City Council at the public hearing.

EXAMPLES OF APPROPRIATE CONDITIONS

The following examples of zoning conditions are those typically associated with rezoning requests. A request is neither limited to nor required to include any of the zoning conditions or portions thereof given as examples in this guide. Every property or

situation is unique, and thus zoning conditions should be carefully considered before being added to an application.

Uses:

- § Uses limited to *medical and dental offices*.
- § Uses limited to *townhomes* designed for sale. (this condition denotes for sale units versus rental units)
- § All uses permitted in the Limited Business District except *convenience stores with fuel pumps*.
- § Any use with drive-thru service shall not be permitted.

Density:

- § Maximum of 20 dwelling units.
- § Maximum of 20,000 square feet of gross floor area shall be permitted on the site.

Dimensional Requirements:

- § No structure shall exceed 2 above ground stories in height.
- § *Minimum* building setback of 50 feet from the *eastern property line*.
- § *Maximum* building setback of 20 feet from the *street right-of-way line*.

Signage:

- § Freestanding signage shall be limited to monument signs with a maximum height of 6 feet and maximum size of 48 square feet.
- § Outdoor advertising signs (billboards) shall be prohibited.

Landscaping and Buffering:

- (See Development Ordinance for specific planting widths and rates)
- § A 50 foot undisturbed buffer shall be maintained along the *northern property line*.
 - § The required planting yard width and planting rate shall be *doubled* along the *western property line*.

§ A 15 foot wide street planting yard shall be provided along *Spring Garden Street* with a planting rate of 3 canopy trees, 3 understory trees, and 20 shrubs per 100 linear feet.

§ *Solid wood fencing* at a minimum height of 6 feet shall be provided along the *southern property line*.

Design Issues:

- § The exterior of *all structures* shall be constructed primarily of *brick* building materials.
- § Expanses of blank walls shall not exceed 15 feet in length without fenestration or architectural features.
- § Off-street parking areas shall be prohibited between the principal building and *adjacent street right-of-way(s)*.
- § Interior pedestrian circulation between the principal building(s) and public streets shall be provided through the use of clearly defined walkways.
- § Outside storage shall be prohibited.
- § Exterior lighting fixtures shall be a maximum of 15 feet in height.
- § Vehicular cross access shall be provided to *adjacent properties*.
- § Maximum of *one* vehicular access point on *Spring Garden Street*.

EXAMPLES OF INAPPROPRIATE CONDITIONS

- § Each principal dwelling unit shall be a minimum of 3,000 square feet (this condition could be exclusionary and is not appropriate*).
- § Each principal dwelling unit shall have a minimum sale price of \$100,000 (this condition could be exclusionary and is not appropriate*).
- § Additional landscaping shall be provided along some of the property lines (not a

quantitative condition...need to specify the amount, type, and specific location).

§ All dumpsters shall be screened (already required by the Development Ordinance).

* Conditions that are not appropriate for a conditional zoning district may be agreed upon by the applicant and affected parties subject to a private agreement.

WHAT ABOUT THE ADJACENT NEIGHBORHOOD?

The rezoning process allows a developer to foster relationships with neighborhood residents to ease the strain and impact new developments pose on existing neighborhoods. With this in mind, the City Council and Zoning Commission have expressed a strong desire that an applicant communicate with affected property owners prior to the public hearing. Staff also encourages applicants to discuss specifics of their case with neighboring residents prior to submitting an application. This preliminary discussion can take place in the form of a public neighborhood meeting, attendance at a neighborhood association meeting, or some other means such as written communication.

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CONDITIONAL ZONING

Purpose.

Conditional zoning districts are zoning districts in which the development and use of the property is subject to predetermined ordinance standards and the rules, regulations, and conditions imposed as part of the legislative decision creating the district and applying it to the particular property. The following zoning district categories are conditional zoning districts:

Parallel conditional zoning districts (a parallel conditional zoning district is a conditional zoning district in which the potential permitted use or uses are, except as limited by the conditions imposed on the district, of the same character or type as the use or uses permitted in a general district having a parallel designation or name.)

A conditional zoning district allows particular uses to be established only in accordance with specific standards and conditions pertaining to each individual development project. Some land uses are of such a nature or scale that they have significant impacts on both the immediately surrounding area and on the entire community which cannot be predetermined and controlled by general district standards. There are also circumstances in which a general district designation allowing such a use by right would not be appropriate for a particular property even though the use itself could, if properly planned, be appropriate for the property consistent with the objectives of these regulations, the adopted land use plan, adopted area plans and other long range plans. The review process established in this division provides for the accommodation of such uses by a reclassification of property into a conditional zoning district, subject to specific conditions which ensure compatibility of the use with the use and enjoyment of neighboring properties. A conditional zoning district is generally not intended for securing early zoning for a proposal, except when that proposal is consistent with an approved district or area plan or the proposal can demonstrate that public infrastructure needed to serve the development will be made available within a reasonable time period. A separate master plan approval process as described in this division may be utilized only when a proposal is (i) a component of a development project that is the subject of a development agreement between the City of Wilmington and a developer pursuant to North Carolina General Statutes Section 160A-400.20 et seq. ("Development Agreement") or (ii) located within an Large Infill or Redevelopment Priority Area as established in the Future Land Use Plan or the Corridor Plans as adopted.

Plans and other information to accompany petition.

(a) Property may be rezoned to a conditional zoning district only in response to and consistent with a petition submitted by the owners of all of the property to be included in the district. A petition for conditional zoning must include a site plan, drawn to scale, and supporting information and text that specifies the actual use or uses intended for the property and any rules, regulations, and conditions that, in addition to all predetermined ordinance requirements, will govern the development and use of the

property. The following information must be provided:

- (1) A boundary survey and vicinity map showing the property's total acreage, its zoning classification(s), the general location in relation to major streets, railroads, and/or waterways, the date, and north arrow;
 - (2) All existing easements, reservations, and rights-of-way;
 - (3) Approximate location on the site of proposed buildings, structures and other improvements;
 - (4) Approximate dimensions, including height of proposed buildings and other structures;
 - (5) Proposed use of all land and structures, including the number of residential units and the total square footage of any nonresidential development;
 - (6) All yards, buffers, screening, and landscaping required by this chapter or proposed by the petitioner;
 - (7) All existing and proposed points of access to public streets;
 - (8) Delineation of areas within the regulatory floodplain as shown on the official flood hazard boundary maps for the City of Wilmington;
 - (9) Proposed phasing, if any;
 - (10) The location of existing and proposed storm drainage patterns and facilities intended to serve the proposed development;
 - (11) Approximate location of all existing and proposed infrastructure on the site, including water, sewer, roads and pedestrian walkways;
 - (12) Generalized traffic, parking, and circulation plans;
 - (13) Tree survey, if required by this chapter; and
 - (14) Site inventory as required by this chapter.
- (b) Exception to site plan submittal for (i) proposed conditional zoning districts that are components of development projects that are subject to Development Agreement, and (ii) Infill or Redevelopment areas.
- (1) For a proposed conditional zoning district constituting a component of a development project that is the subject of a Development Agreement, or within an Infill or Redevelopment Priority Area as established in the

Future Land Use Plan, the applicant shall submit a master land use conceptual area plan in lieu of a detailed site plan. City Council approval of the master plan shall be required. Conditions from any adopted district, corridor, or area plan, including the Future Land Use Plan shall be adopted as part of the approval where appropriate. The site plan shall be approved by the technical review committee.

(2) Submittal Requirements--Master Plan. The master plan shall consist of the following:

- a. A boundary survey and vicinity map showing the property's total acreage, its zoning classification(s), the general location in relation to major streets, railroads, and/or waterways, the date, and north arrow.
- b. A conceptual land area plan showing the location of all major land use types and the proposed maximum square footage for each use. This may be done in a bubble format showing the general location and relative arrangement of different land uses.
- c. Maximum building heights shall be delineated on the conceptual land area plan.
- d. The plan shall indicate all external access points.
- e. Conceptual internal traffic circulation plan.
- f. The plan shall indicate proposed buffers.
- g. Generalized open space areas and stormwater facilities shall be indicated.
- h. The applicant shall submit a text narrative indicating how the proposed plan conforms to conditions of any adopted area plan, corridor plan, or other long-range plan, including the Future Land Use Plan.
- i. A traffic impact analysis shall be submitted based on the generalized land uses proposed. Maximum trip generation impacts shall be established as part of the plan.

(4) Submittal Requirements--Site Plan. Once the conditional zoning and master plan have been approved, the applicant may submit a site plan for approval in accordance with this chapter. The site plan shall be accompanied by the following information:

- a. The applicant shall submit a text narrative indicating how the proposed site plan conforms to the adopted master plan.
- b. For phased projects, the submitted site plan shall show the generalized location of vehicular and pedestrian accesses to additional phases.

(c) The City Manager has the authority to waive any application requirement where the type of use or scale of proposal makes providing that information unnecessary or impractical.

(d) In the course of evaluating the application, the City Manager, planning commission or City Council may request additional information from the petitioner. This information may include the following:

- (1) Proposed screening, buffers and landscaping over and above that required by these regulations, as well as proposed treatment of any existing natural features;
- (2) Existing and general proposed topography, at four (4) foot contour intervals or less;
- (3) The location of significant trees on the subject property;
- (4) Scale of buildings relative to abutting property;
- (5) Building elevations and exterior features of proposed development;
- (6) Any other information needed to demonstrate compliance with this chapter; and
- (7) Proposed number and location of signs.

(e) The site plan and any supporting text shall constitute part of the petition for all purposes under this division.

Required community meeting before public hearing.

Before a public hearing may be held on a petition for a conditional zoning district, the petitioner must file in the office of the city clerk a written report of at least one (1) community meeting held by the petitioner. The community meeting shall be held prior to the planning commission's consideration of the petition. Written notice of such a meeting shall be given to the property owners and organizations entitled to notice as determined by policies approved by the City Council. The report shall include, among other things, a listing of those persons and organizations contacted about the meeting and the manner and date of contact, the date, time and location of the meeting, a roster of the persons in

attendance at the meeting, a summary of issues discussed at the meeting, and a description of any changes to the rezoning petition made by the petitioner as a result of the meeting. In the event the petitioner has not held at least one (1) meeting pursuant to this subsection, the petitioner shall file a report documenting efforts that were made to arrange such a meeting and stating the reasons such a meeting was not held. The adequacy of a meeting held or report filed pursuant to this section shall be considered by the City Council but shall not be subject to judicial review.

Approval of conditional zoning district.

Conditional zoning district decisions are a legislative process subject to judicial review using the same procedures and standard of review applicable to general use district zoning decisions. In considering any petition for a conditional zoning district, the council shall act in accordance with section 18-120, "Action by City Council." Conditional zoning district decisions shall be made in consideration of identified relevant adopted land use plans for the area, including, but not limited to, comprehensive plans, strategic plans, district plans, area plans, neighborhood plans, corridor plans, and other land-use policy documents.

The City Council may not vote to rezone property to a conditional zoning district during the time period beginning on the date of a municipal general election and concluding on the date immediately following the date on which the City Council holds its organizational meeting following a municipal general election unless no person spoke against the rezoning at the public hearing and no valid protest petition under G.S. 160A-386 was filed. If a valid protest petition under G.S. 160A-386 has been filed against a zoning petition which would otherwise have been scheduled for a public hearing during the period beginning on the first day of October prior to a municipal general election, but prior to the new City Council taking office, then the public hearing on such petition and any decision on such petition shall both be postponed until after the new City Council takes office.

Conditions to approval of petition.

In approving a petition for the reclassification of property to a conditional zoning district, the planning commission may recommend, and the City Council request, that reasonable and appropriate conditions be attached to approval of the petition. Any such conditions should relate to the relationship of the proposed use to surrounding property, proposed support facilities such as parking areas and driveways, pedestrian and vehicular circulation systems, screening and buffer areas, the timing of development, street and right-of-way improvements, water and sewer improvements, stormwater drainage, the provision of open space, and other matters that the City Council may find appropriate or the petitioner may propose. Such conditions to approval of the petition may include dedication to the city, Cape Fear Public Utility Authority, county or state, as appropriate, of any rights-of-way or easements for streets, water, sewer, or other public utilities necessary to serve the proposed development. The petitioner shall have a reasonable opportunity to consider and respond to any such conditions prior to final action by the

City Council. If for any reason any condition for approval is found to be illegal or invalid or if the applicant should fail to accept any condition following approval, the approval of the site plan for the district shall be null and void and of no effect and proceedings shall be instituted to rezone the property to its previous zoning classification.

Effect of approval.

(a) If a petition for conditional zoning is approved, the development and use of the property shall be governed by the predetermined ordinance requirements applicable to the district's classification, the approved site plan or master plan for the district, and any additional approved rules, regulations, and conditions, all of which shall constitute the zoning regulations for the approved district and are binding on the property as an amendment to these regulations and to the zoning maps.

(b) If a petition is approved, only those uses and structures indicated in the approved petition and site plan or land use area indicated on the master plan shall be allowed on the subject property. A change of location of the structures may be authorized pursuant to section 18-232, alterations to approval. The changes to the site plan layout will not increase the number of structures.

(c) Following the approval of the petition for a conditional zoning district, the subject property shall be identified on the zoning maps by the appropriate district designation. A parallel conditional zoning shall be identified by the same designation as the underlying general district followed by the letters "CD" (for example "RB (CD)").

(d) No permit shall be issued for any development activity within a conditional zoning district except in accordance with the approved petition and site plan for the district.

(e) Any violation of the approved site plan or any rules, regulations and conditions for the district shall be treated the same as any other violation of this Chapter and shall be subject to the same remedies and penalties as any such violation.

Alterations to approval.

Except as provided in subsection (b) below, changes to an approved petition or to the conditions attached to the approved petition shall be treated the same as amendments to these regulations or to the zoning maps and shall be processed in accordance with the procedures in this chapter. Any changes that would be considered major changes under section 18-89 herein shall be subject to this subsection.

(a) The City Manager shall have the delegated authority to approve an administrative amendment to an approved site plan. The City Manager shall have no authority to amend the conditions of approval of a petition. The standard for approving or denying such a requested change shall be that the change does not significantly alter the site plan and that the

change does not have a significant impact upon abutting properties. An administrative amendment shall not be subject to a protest petition pursuant to section 18-121. Any decision must be in writing stating the grounds for approval or denial.

- (b) The City Manager, however, shall always have the discretion to decline to exercise the delegated authority either because he is uncertain about approval of the change pursuant to the standard or because a rezoning petition for a public hearing and City Council consideration is deemed appropriate under the circumstances. If the City Manager declines to exercise this authority, then the applicant can only file a rezoning petition for a public hearing and council decision.
- (c) Any request for an administrative amendment shall be pursuant to a written letter, signed by the property owner, detailing the requested change. Upon request, the applicant must provide any additional information that is requested. Upon an approval of an administrative amendment, the applicant must file a sufficient number of copies of a revised site plan as deemed necessary by the City Manager.

Review of approval of a conditional zoning district.

It is intended that property shall be reclassified to a conditional zoning district only in the event of firm plans to develop the property. Therefore, no sooner than three (3) years after the date of approval of the petition, the planning commission may examine the progress made toward developing the property in accordance with the approved petition and any conditions attached to the approval. If the planning commission determines that progress has not been made in accordance with the approved petition and conditions, the planning commission shall forward to the City Council a report which may recommend that the property be rezoned to its previous zoning classification or to another district.