Board members present: All parties were present in person or by Zoom.

Board members: Wade Burns

Bill Scheu

Mason Blake

Allen Crawford

Dan Dean

Board members absent: David Holcomb

Sally Stancil

Town staff present: Scott Adams, Zoning Administrator

Alex Carmichael, Town Administrator

Angie Murphy, Town Clerk

Susan Taylor Rash, Town Attorney (via Zoom)

Two members of the public were present and several members were watching via Zoom. Mr. Scheu called the meeting to order at 10:30 a.m., and led the group in a moment of silence. Mr. Scheu reminded everyone that the MRA application had not been presented to the Board at this time. Mr. Scheu stated that today’s discussion would revolve around the proposed Montreat Zoning Ordinances which had been worked on for the past two years. Mr. Scheu also reminded everyone in attendance that they all shared a love for Montreat.

**Agenda Approval**

Dan Dean moved to adopt the agenda as presented. Mason Blake seconded and the motion carried 5/0.

**Meeting Minutes Adoption**

Dan Dean requested to remove from the February 4th Meeting Minutes, on the second page, the rest of the sentence after “Mason Blake moved to approve two ordinances above”. Dan Dean moved to approve the February 4th Meeting Minutes as amended. Mason Blake seconded and the motion carried 5/0.

Dad Dean moved to approve the March 11th Meeting Minutes as presented. Mason Blake seconded and the motion carried 5/0.

**Presentation and Consideration of Points of Concern from Montreat Stewards re: PROPOSED Montreat Zoning Ordinance**

Priscilla Hayner gave a brief overview of the recommendations as she and her group saw them.

Mason Blake then read a prepared response from the Planning & Zoning Commission in response to the “Hayner Group” recommendations. A summary of the prepared response is below.

Mason Blake pointed out that the term “conditional use permit” has been changed in the revised zoning ordinance to “special use permit” because of the new terminology mandated by the new North Carolina General Statutes, Chapter 160D, effective July 1, 2021.

The Hayner Memo recommends that “the new zoning ordinance retain the required review and recommendation of the Planning and Zoning Committee before the Board of Adjustment can consider applications for Special Use Permits.” This is not permitted by the provisions of the new NCGS Chapter 160D. Mason Blake went to say that under NCGS 160D-705(a) only one board can be granted the authority to hear and decide on special use permits. A local government may choose among its board of adjustment, planning and zoning board and governing body in specifying, in its zoning ordinance, which body will hear and decided on special use permits. NCGS 160D-301(b)(6) states that a planning board may be assigned the duty to “provide a preliminary forum for review of quasi-judicial decisions, provided that no part of the forum or recommendation may be used as a basis by the deciding board.” Mason Blake stated that if a planning board’s action cannot be considered by a board of adjustment in making its decision, a local government certainly cannot require the recommendation of the planning board as a prerequisite to the board of adjustment taking action on the application. Under NCGS 160D-301, the Town of Montreat could continue to have the P&Z Commission hold hearings as a “preliminary forum” on special use permit applications. But the Zoning Board of Adjustment could not consider the action taken by the P&Z Commission in deciding whether to approve the permit. The Zoning Board of Adjustment also could not consider any information given or statements made by the “public” at the P&Z Commission’s meeting. NCGS 160D-301(b)(6) requires the Board of Adjustment to essentially ignore the entire P&Z Commission meeting as if it had not taken place. The provisions of the current ordinance that allow for extensive public participation and comment during the P&Z Commission’s consideration of a special use permit application may not be permissible under the provisions of the new NCGS Chapter 160D. NCGS 160D-406(a) seems to require that the planning board’s hearing under NCGS 160D-301 must be held using quasi-judicial procedures. NCGS 160D-705 makes it clear that special use permits are the result of quasi-judicial decisions. Mason Blake went onto say that although the Hayner Memo suggests that the P&Z Commission’s review of a special use permit application is the “main opportunity for the public to raise objections to the application,” he does not agree given the requirements of NDGS Chapter 160D. The P&Z Commission’s failure to recommend an application cannot effectively constitute a denial of the application. The P&Z Commission’s recommendation or failure to recommend an application cannot be considered by the Board of Adjustment in making its determination on a special use permit. The Zoning Board of Adjustment also cannot consider any information given or statements made by the “public” at the P&Z Commission’s meeting. Mason Blake stated that instead of a P&Z Commission hearing, the main and only real opportunity for opponents of a special use permit to prevail in opposing the permit is to present competent, substantial and material evidence that disproves or rebuts the evidence presented by the applicant at the hearing as to the findings required to be made by the Board of Adjustment under section 310.62 of the revised zoning ordinance. Mr. Blake went on to say that any continued involvement of the P&Z Commission in the Special Use Permit process, as recommended by the Hayner Memo, would in effect be meaningless and therefore purposeless exercise. The Commission has proposed in the revised zoning ordinance to eliminate any role on the part of the P&Z Commission in order to avoid wasted time and effort on the part of all parties including Town staff, as well as frustrated expectations on the part of members of the public who participate in a meaningless process with the mistaken belief that their statements and comments will be heard and considered by the Board of Adjustment in making its decision on a Special Use Permit.

The P&Z Commission believes the findings required in section 310.62 of the revised ordinance did not diminish but in fact expanded the testimony and burden of proof required to be presented by an applicant for a special use permit. To address concerns that the Hayner Memo raises regarding the wording of certain provisions in section 310.62 of the revises ordinance, the Commission proposes to make the following revisions to section 310.62, inserting and referencing various terms used in the existing ordinance, as well as adding a new subsection 310.626 to make sure that in substance all the findings required in the existing ordinance are included in the required findings of the revised ordinance.

In Section 310.621 the words “be detrimental to or endanger” will be added, replacing the words “be detrimental to or endanger”, after the word “not” in the first line.

In Section 310.622 the words “or will meet” will be added in the first line after the word “meets” and the words “of the Town of Montreat (including without limitation all development standards, conditions and requirements related to utilities, parking, access and storm water drainage and the applicable regulations of the Zoning District in which it is located, except as such regulations may, for each case, be modified by the Board of Adjustment)” will be added after the words “standards and conditions”.

In Section 310.623 the word “injure” will be replaced with the words “diminish and impair” and the words “any property any portion of which is located within two hundred fifty feet (250’) of the boundary of the parcel on which the Use will be located” will be added.

In Section 310.624 the words “and will not be injurious to the use and enjoyment of other property within the area in which it is located” will be added after the word “located” in the third line.

In Section 310.625 the words “[t]hat the location and character of the Use, if developed according to the plan as submitted and approved, will” be added in the first line, replacing the words “[t]hat the Use will”.

In Section 310.626, which is the new section to add, “That adequate measures have been taken or will be taken to provide ingress and egress so designed as to minimize congestion in the public streets”.

The Planning & Zoning Commission proposed to amend 310.61 to read in its entirety as follows: “The purpose of this section 310.6 is to ensure there is adequate review and control of the issuance of Special Use Permits, which may have a direct influence or impact upon neighboring or contiguous land uses. This review is intended to aid in protecting the private and public values and interests in such land uses whether residential, institutional, or commercial in nature. The Uses for with Special Use Permits are required are listed in the Table of Permitted Uses”.

In Sections 310.634, 310.635 and 310.636 additional changes were made for clarification and improvement purposes. Section 310.636 states that the burden of presenting a complete application to the Board of Adjustment shall be upon the applicant. Once a completed application has been submitted, the applicant shall have the burden to present competent, substantial and material evidence that would support findings by the Board of Adjustment in accordance with the requirements of section 310.62 and that demonstrates the applicant has otherwise complied with all the requirements of this Ordinance applicable to the requested Special Use Permit. Thus these sections would be revised to read in their entirety as follow:

310.634 The Board of Adjustment shall only approve the requested application if it concludes, based upon the information submitted at the hearing, that:

(1) The requested permit is within its jurisdiction to grant according to the Table of Permitted Uses;

(2) The application for the permit is complete; and

(3) If completed as proposed in the application, the development will comply with all the requirements of this Ordinance.

310.635 Even if the Board of Adjustment finds that the application complies will all other provisions of this Ordinance, it shall deny the permit if it is unable to make all the findings required in section 310.62, based upon a preponderance of the evidence submitted at the hearing.

310.636 The burden of presenting a complete application to the Board of Adjustment shall be upon the applicant. However, unless the Board informs the applicant at the hearing in what way the application is incomplete and offers the applicant an opportunity to complete the application (either at that meeting of at a continuation hearing), the application shall be presumed to be complete. Once a completed application has been submitted, the applicant shall have the burden to present competent, substantial and material evidence that would support findings by the Board of Adjustment in accordance with the requirements of section 310.62 (that is, the applicant has the burden to make a prima facia sufficient to support the required findings), and that demonstrates the applicant has otherwise complied with all the requirements of this Ordinance applicable to the requested Special Use Permit. Upon such a showing by the applicant, those parties opposed to granting the Special Use Permit shall have the burden of presenting competent, substantial and material evidence that disproves or rebuts the evidence and information presented by the applicant.

With regards to Conflict of Interest the Commission proposes the following additions to the revised ordinance: (1) to add the following sentence at the end of section 308.2 of the revised ordinance: “All members of the Planning Commission shall comply with NCGS 160D-109, and other applicable conflict of interest laws and requirements of the State of North Carolina”; (2) to add the following sentence at the end of section 310.3 of the revised ordinance: “All members of the Zoning Board of Adjustment shall comply with NCGS 160D-109, and other applicable conflict of interest laws and requirements of the State of North Carolina”.

The P&Z Commission has provided in Section 310.625 of the revised ordinance that the applicant must prove the proposed use is in general conformity with the Comprehensive Plan and other policies and plans of the Town. This is a new requirement.

As for Environmental Protections the Town of Montreat has separate ordinances governing storm water and steep slope development. The P&Z Commission anticipates that it will review these ordinances in the near future at the request of the Town Council. Other environmental concerns and issues are addressed in Chapter K of the Code. Section 310.622 of the revised zoning ordinance will require the applicant to present evidence that the proposed use meets or will meet all the required and applicable development standards and conditions provided for in these separate ordinances addressing environmental concerns.

Mason Blake moved to include all written and submitted public comments as an exhibit attached to the meeting’s minutes. Allen Crawford seconded and the motion carried 5/0.

Dan Dean moved to amend previously amended Sections 510.58, 510.7 and 511.10. Mason Blake seconded and motion carried 5/0.

Dan Dean moved to approve formal response that has been circulated this morning and that Mr. Blake so eloquently elaborated upon. Mason Blake seconded and the motion carried 5/0.

Mason Blake moved to add, at the end of the first grammatical paragraph in section 107 immediately after the words “Building of land”, the words “except in conformity with this ordinance”. Allen Crawford seconded and the motion carried 5/0.

Mason Blake moved to change the reference regarding civil penalties in 307.7(A) to 307.62 instead of 307.2. Dan Dean seconded and the motion carried 5/0.

Mason Blake moved to change the reference in 311.637 from 619.37 to 310.62 et seq. Dan Dean seconded and the motion carried 5/0.

Mason Blake moved to add in Section 310.624 the following verbiage “for purposes already permitted” after “use and enjoyment of other property”, Dan Dean seconded and the motion carried 4/1 with Wade Burns voting against the motion.

The next meeting date will be May 13th at 10:30 a.m.

**Public Comment**

The public comment will be attached to the minutes as Exhibit 1.

**Adjournment**

Dan Dean moved to adjourn the meeting. Mason Blake seconded and the meeting was adjourned at 12:35 p.m.

­­­­­­­­­­­­­­­­\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Bill Scheu, Chair Angie Murphy, Town Clerk