Board members present by Zoom: None

Board members: Wade Burns

Dan Dean

Liz Johnson

Julie Schell

Bill Scheu

Sally Stansill

Board members absent: Jean David, Alternate Representative

John Hinkle, Regular Member

Town staff present: Scott Adams, Zoning Administrator

Angie Murphy, Town Clerk

Special Guests: None

There were approximately thirteen members of the public at the meeting and several members of the public 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 after a brief welcome.

**Agenda Approval**

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

**Meeting Minutes Adoption**

Bill Scheu made some minor changes after the April 14th Meeting Minutes were distributed to the Commissioner Members. Julie Schell moved to approve the April 14, 2022 minutes as amended. Wade Burns seconded and the motion carried 5/0.

**Organization of P&Z Commission**

Jean David was not present to be sworn in as an Alternate Member. Bill Scheu advised that at this evening’s Town Council Meeting the Board of Commissioners intended to vote on appointing Allen Crawford as the Montreat ETJ Planning & Zoning Representative.

**Conditional Zoning, Lot 1185, Mississippi Rd. (PIN # 071065016800000)**

Bill Scheu advised that unlike the Board of Adjustment quasi-judicial hearings this meeting was more of legislative hearing. Mr. Scheu also advised that after hearing the details of the request, answering any questions that the Commission members might have and voting, the Commission will then have to draft a response which will be given at a Special Meeting on June 9th. The matter at hand will then be referred to the Board of Commissioners who will either approve or deny the Conditional Zoning request.

Zoning Administrator Scott Adams gave a brief power point overview of the purpose of the meeting. Lot 1185 is a vacant lot between 157 and 161 Mississippi Road. The lot is zoned R-1 Low-Density Residential and sits on 0.22 acres. Mike and Kathy Mader are interested in building a new single family detached house. The Conditional Zoning request involves the applicants requesting a 10’ side setback on south/west side of property. A building with a 10’ side setback (15’ is the standard) requires Conditional Zoning. Properties within 250 feet of the lot were sent a letter ahead of the community meeting that was held on this matter.

Attorney John Noor, of Roberts & Stevens, P.A., began the applicant’s presentation on behalf of Mike and Kathy Mader. The Maders found a piece of property on Mississippi Road that they were interested in and began the process for surveying. The surveyor mistakenly labeled the property as R-2 instead of R-1 which led the Maders to think they could have 10’ setbacks instead of 15’. They soon found out they could not build what they had contracted Architect Maury Hurt for on that property due to the setback limitations. The Maders thought about pursuing a variance through the Montreat Board of Adjustment but that wasn’t really the right avenue because the property was considered buildable. The Maders then had the architect look at other plans to fit the setbacks but the Maders felt that the resulting designs did not fit in with the rest of the homes on Mississippi Road. In order to fit within the 15’ setbacks they would have to build a three-story home. The Maders have offered to build a smaller house (two-story) with landscape buffers in exchange for the reduction in the setback on the southwest side.

Architect Maury Hurt advised that the two-story home that the Mader’s would like the flexibility to build will be about 1,100 square feet. Mr. Hurt was available to answer questions of the Planning & Zoning Commission with regards to the architectural designs and retaining wall. The second part of the condition that the Mader’s are willing to fulfill would be the vegetative landscaping buffer along the retaining wall. Mr. Noor advised that the Mader’s are only applying for conditional zoning at this point and they still have to apply and be approved for the stormwater process. Landscape Architect Hutch Kerns advised that the road is below the house, on a narrow lot with an uphill slope. The house is sitting as close to the front setback as it possibly can with the house tucked into the earth. The retaining wall behind the house holds back the earth and follows the grade. The retaining wall is only seen from below. A landscape buffer, a 6’ or 8’ evergreen buffer, would screen the retaining wall from the property line. There is a large tree on the property that the neighbors expressed concern about and Mr. Kerns states that no construction will be done near the base of the tree to protect the roots. Mr. Kerns went on to review the drainage and stormwater controls. Mr. Noor stated that during the previously held Community Meeting he invited the neighbors to dispute the signed, sealed plans with professional findings of their own with regards to stormwater and drainage but no one has done so. Mr. Noor and Mr. Kerns advised that the drainage features will actually diminish water drain off on the Oliver property next door.

Mark Oliver of 161 Mississippi Road spoke next with regards to the Maders request. Mr. Oliver stated that the applicants has previously made application for a variance to achieve the same setback goals before the Board of Adjustment in September 2020. The Maders requested a variance to allow the residence as designed to go forward. The Board of Adjustment heard evidence which showed that a home could be constructed upon the land that would comply with the zoning but not one as set forth in the architectural plans submitted. It’s Mr. Oliver’s opinion that the Maders are now requesting the exact same relief that they were unable to obtain before at the variance hearing. The Maders have provided no legitimate reason why they do not wish to follow Town of Montreat zoning standards. Mr. Oliver feels that it is unfortunate that the surveyor’s improperly reporting of the side yard setbacks have caused this issue and the Maders have architectural plans that do not allow such a dwelling to be built. Mr. Oliver stated “what are zoning regulations for, if not to be required to be followed?” Mr. Oliver also had some concerns about a 48 inch diameter live tree that shares the boundary between his property and the Maders’. Mr. Oliver felt that the survivability of the tree is questionable based upon the applicant’s drawings and the nearness of the root structure to the construction that would take place in that area. Mr. Oliver felt that the Maders’ plans show concern for the tree but provide no specific details to save the tree’s life. Mr. Oliver also expressed concerns about the drainage impact of building the residence as proposed. Mr. Oliver stated that the applicant’s plan provides for an 8 inch drain above the home at the bottom of the hillside and a French drain near his property line but there are no details as to its volume or construction. Mr. Oliver also stated that detrimental consequences of excess drainage from the Mader’s could be very costly and affect property values. Mr. Oliver also expressed concerns about drainage issues on the opposite side of the proposed residence. Mr. Oliver also expressed some concerns about the 15 foot utility easement between his property and the Maders. Mr. Oliver wanted to know what conditions would assure that utilities to his home would not have to be relocated or affected and that no expense would be borne by them. Finally, Mr. Oliver stated that the proposed conditional zoning should not be granted as the applicants are not barred from building within the current zoning requirements with another structure as they admit in their application.

Stephanie Farrior, who appeared via Zoom, owns the property at 157 Mississippi Road. Ms. Farrior asked for further clarification regarding the installation of a drainage swale that appeared to necessitate digging up to her property line. Mr. Noor advised that the structural engineer had designed the swale so there would not be any earth disturbance. Ms. Farrior stated that she researched whether a house could be built with the same square footage within the setbacks as set out by the zoning regulations and she was pleasantly surprised that there were options for such. Ms. Farrior also stated that the Maders felt that a three story home would be inconsistent with other homes nearby but there is a three story home on Virginia Road. Ms. Farrior does not believe the size inconsistency should be a reason for not obeying the zoning regulations. Ms. Farrior also feels that with the frequency of heavy rainstorms in Montreat that the applicants should not be allowed to dig 5’ into the slope on the property.

Mrs. Mader spoke on behalf of her and her husband. Mrs. Mader wants to be good neighbors but she doesn’t feel that their request is that unreasonable. Mrs. Mader felt that the appropriate amount of due diligence had been done to insure everything was correct. Mr. Noor also stated that he talked to the Herrons and the Storks, additional neighbors, who had no problems with the Maders’proposal.

After taking a consensus from each Commission member about how they would vote, Chairman Scheu discussed the conditions that he saw as ones to impose on the Maders: the landscaping buffer, efforts to retain the tree’s health and vitality, a condition that MSD grants the approval, none of the excavation for the retaining wall should carry over onto Ms. Farrior property. Mr. Scheu stated that he would like to draft the conditions in black and white for the applicants to follow and come back for the June meeting with the final decision. Mr. Noor, on behalf of the Maders, stated that he was fine with all of the conditions and he was going to recommend that an arborist be hired to look after the health and longevity of the tree. Mr. Scheu also recommended that communication needs to continue to be important with the neighbors. Mr. Dean moved to recommend to Town Council that they approve the application for Conditional Zoning Permit subject to the conditions that have been discussed and will be fine-tuned at the June meeting. Wade Burns seconded and the motion carried 5/0.

The next meeting will be June 9th at 10:30 a.m.

**Public Comment**

There was no public comment.

**Adjournment**

Wade Burns moved to adjourn the meeting. Julie Schell seconded and the meeting was adjourned at 1:04 p.m.

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Bill Scheu, Chair Angie Murphy, Town Clerk