Board members present: Mark Spence

David Neel

Eleanor James

Board members via Zoom: Arrington Cox

Danny Sharpe

Board members absent: Robert Sulaski

Martha Chastain

Town staff present: Scott Adams, Zoning Administrator

Angie Murphy, Town Clerk

Ben Blackburn, Interim Town Manager

Mr. Spence, as Chair, called the meeting to order at 5:00 p.m., and led the group in a moment of silence. Mark Spence certified that a quorum was present.

The meeting was recorded and posted to the Town website on the YouTube Channel which can be found at the following link:

<https://www.youtube.com/watch?v=3byfbYKXXNQ&t=49s>

**Agenda Adoption**

Eleanor James moved to adopt the agenda as presented. Danny Sharpe seconded and the motion was carried 5/0.

**Adoption of Meeting Minutes**

Eleanor James moved to adopt May 26, 2022 Meeting Minutes as drafted. Arrington Cox seconded and the motion carried 5/0.

**Evidentiary Hearings**

A. **Variance –** Lot 766, Greybeard Trail, in Montreat’s Extraterritorial Jurisdiction (ETJ) PIN# 072111435500000 (Theodosia Wade, Wade Crozier, et al. property owners)

Lot 766 in Montreat’s Extraterritorial Jurisdiction (ETJ) is zoned R-3 Low-Density Residential. The setbacks are as follows: 30’ front, 15’ side, rear is 20% of lot depth or 35’ maximum. The proposed project is to build a new single-family detached house. The applicant is requesting a 0’ rear setback on the north side of the property. The applicant is requesting this Variance to setbacks to move their proposed new house away from a Buncombe County mandated septic field in a predetermined location on the south side of the property.

Wade Crozier stated that his family has consistently owned this lot since 1908 and they would like to build a family home on the lot and appreciate any consideration on the matter.

Town Clerk Angie Murphy swore in Zoning Administrator Scott Adams and John Richardson and Allen Crawford, property owners in the ETJ. Mr. Richardson stated that he is 100% in support of neighbors being good neighbors and encouraging quality houses to be built in the ETJ. Mr. Crawford also expressed his interest in allowing this property request to be completed.

Mr. Wade stated that MRA has mentioned closing Lapsy Lane (unbuilt right-of-way) and giving the Wades and neighboring property owners 30 ft in exchange for an easement onto their land. Mr. Crozier stated his family was waiting to hear the results of this variance before they pursued anything further with the MRA. The Wades have also been in contact with the Town of Montreat about an easement onto their property for water line access.

After much discussion Danny Sharpe felt that the MRA should close and abandon the right-of-way and then deed the lot to the Wade family and to the neighboring property owners which would eliminate the need for a variance. Eleanor James suggested that the Wade family withdraw the variance request and get the property transfer codified by the MRA so the Board of Adjustment can hear another request for a variance from them. Eleanor James advised the Wade family representative that if they deny the variance today they would have to wait an entire year before coming before the Board of Adjustment again. Danny Sharpe advised that if the MRA deeds the property to the Wade family on the north and the south sides of the property the Wades will not need a variance. Eleanor James moved to continue this variance until more information is gathered from the MRA. Arrington Cox seconded and the motion carried 5/0.

B. **Appeal of Zoning Administrator’s Determination –** Lot 778, in Montreat’s Extraterritorial Jurisdiction (ETJ)-PIN# 072111773600000 (Wade Burns, property owner); appeal by James Hamilton, neighboring property owner at 780 Foreman Siding Rd. (PIN# 072111874200000)

Lot 773 in the Montreat Extraterritorial Jurisdiction (ETJ) is zoned R-3 Low-Density Residential. The setbacks are 30’ front, 15’ side and 30’ rear. The proposed project is to build a new single-family detached home. The purpose of the appeal is the Zoning Administrator, Scott Adams, determined the per Section 305 of the Montreat Stormwater Ordinance a 30’ vegetated stream buffer is not required on the subject property, given and NCDEQ Stream Determination of Ephemeral. The definition of an ephemeral stream is as follows: a feature that carries only stormwater in direct response to precipitation with water flowing only during and shortly after precipitation events. An ephemeral strem may or may not have a well-defined channel, the aquatic bed is always above the perched or seasonal high water table, and stormwater runoff is the primary source of water. An ephemeral stream typically lacks the biological, hydrological, and physical characteristics commonly associated with the continuous or intermittent conveyance of water. The Appellant counters that a 30’ vegetated stream buffer is required on the subject property since the stream centerline is shown on NCDEQ referenced maps.

Town Clerk Angie Murphy swore in Zoning Administrator Scott Adams, Wade Burns and Jim Hamilton.

Mr. Wade Burns entered copies of his supporting documents labeled E-W1 – E-W10 into the record.

Mr. Jim Hamilton, adjacent property owner to Wade Burns, stated that this appeal raises two issues: (1) the certificate and the building permit rest on an erroneous interpretation of Section 305 of the Town of Montreat Stormwater Ordinance, and (2) the second issue is whether the Board of Adjustment should exercise its discretion to enforce the 30’ setback requirement regarding the property at issue to prevent serious environmental harm.

The Board of Adjustment viewed some videos submitted to the record by Mr. Hamilton of stream flow.

Mr. Hamilton feels that Mr. Burns has an alternative in that he owns another lot and he could move the lot line and this problem would go away.

Mr. Hamilton called his expert witness Zan Price forward. Mr. Price works as a Senior Engineer for Jennings Environmental in Asheville. Mr. Price provided his qualifications to the Board of Adjustment. Mr. Price described the stream that crosses the Burns property and daylights onto the Hamilton property. Mr. Price described his five different visits to the site in question. Mr. Price stated that he did see some flow after a rainfall event in March and in July he found 6 or 7 inches of sediment in the stream. This sediment would be transported down to Flat Creek in the event of a rainfall. Mr. Price identified problems with building right on top of a stream bank: stream bank erosion, sediment control during construction and post construction there is direct conduit to the stream of various pollutants. Mr. Price stated that the 30 foot setback, that the Town of Montreat Zoning Ordinance recommends, would be sufficient to allow a natural vegetative buffer to buffer the stream from construction activity and post construction pollutants.

Dr. Bill Seaman, Professor Emeritus at the University of Florida in fisheries and aquatic sciences department which he help found three decades ago, wanted to address the construction process with regards to the entire Flat Creek Watershed. Dr. Seaman questioned what will happen if the quality and quantity of water in Flat Creek is diminished. He also expressed his concerns about the quality and quantity of rainfall to be discharged as stormwater runoff from the hardened and impervious construction site. Dr. Seaman toured the construction site in March and he was shocked at how close the construction came to the stream bank. Dr. Seaman hopes that this situation for this site will be turned into a learning experience and a cautionary tale for other permitting issues.

Mr. Burns has been very sensitive to Mr. Hamilton’s concerns. Mr. Burns put in 600 feet of silt fence. Mr. Burns stated that the soil from his construction site has not, to the best of his knowledge, has not left his site. The soil is a specific color and it is not in the creek bed. Mr. Burns stated that the waters are clear in the portion of the stream that crosses his property. Mr. Burns again stated that he has been sensitive to the environment and to Mr. Hamilton’s concerns.

**Continuation of Meeting**

Arrington Cox moved to issue a stay at the request of Mr. Hamilton for the construction on Mr. Burn’s property. Motion failed due to lack of a second.

Eleanor James moved to continue the meeting. Arrington Cox seconded and the motion carried 5/0. The meeting will be continued on August 4th at 5:00 p.m.

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| Mark Spence, Chair |  | Angie Murphy, Town Clerk |