

Town of Montreat
Board of Adjustment (BOA)
Meeting Agenda
February 23rd, 2023, 5:00 p.m.
Montreat Town Hall
1210 Montreat Rd., Black Mountain, NC 28711
Meeting also held via Zoom: <https://bit.ly/3oFiacy>

I. **CALL TO ORDER**

- Welcome
- Moment of Silence

II. **CERTIFICATION OF QUORUM**

III. **AGENDA ADOPTION**

- **Suggested Motion:** To adopt the meeting agenda as presented/amended

IV. **ADOPTION OF OCTOBER 27, 2022 MEETING MINUTES**

- **Suggested Motion:** To adopt the January 26, 2023, Meeting Minutes as drafted.

V. **ORDER OF APPROVAL**

- a) **Variance Request (VA-2022-02) – Variance** – Lot 766, Greybeard Trail, in Montreat’s Extraterritorial Jurisdiction (ETJ) described as PIN# 072111435500000 submitted by the property owners, Theodosia Wade, Wade Crozier, et al.

Suggested Motion: To approve/approve with revisions/deny the written order of approval for a Variance request (VA-2022-02) for a 0’ rear setback on the Subject Property’s north side for a property known as Lot 766, Greybeard Trail, in Montreat’s Extraterritorial Jurisdiction (ETJ) described as PIN# 072111435500000.

VI. **NEW BUSINESS**

- Discuss Board of Adjustment bylaws.

VII. **ADJOURNMENT**

**Town of Montreat
Board of Adjustment
Regular Meeting
January 26, 2023 – 5:00 p.m.
Town Hall**

Board members present: David Neel
Martha Chastain
Danny Sharpe
Arrington Cox
Mari Gramling

Board members absent: Robert Sulaski
Eleanor James
Mark Spence

Town staff present: Angie Murphy, Town Clerk
Kayla DiCristina, Zoning Administrator

Mr. Sharpe, as Vice-Chair, called the meeting to order at 5:00 p.m., and led the group in a moment of silence. Danny Sharpe certified that a quorum was present. Vice-Chair Sharpe reviewed the purpose of the meeting.

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=v1vn_ztz44o&t=7s

Agenda Adoption

David Neel moved to adopt the agenda as presented. Mari Gramling seconded and the motion carried 5/0.

Adoption of January 26, 2023 Meeting Minutes

Arrington Cox moved to adopt the January 26, 2023 Meeting Minutes as presented. Martha Chastain seconded and the motion carried 5/0.

Adoption of Board of Adjustment Bylaws

Mari Gramling moved to adopt the Board of Adjustment Bylaws as presented. Arrington Cox seconded and the motion carried 5/0.

Organization of Board of Adjustment

Martha Chastain moved to adopt the same slate of officers as last time. Arrington Cox seconded and the motion carried 5/0.

- Election of Officers:
 - i. Chair (current: Eleanor James)
 - ii. Vice-Chair (current: Danny Sharpe)
 - iii. Secretary (current: Angela Murphy)

Evidentiary Hearing

A. **Variance Request (VA-2022-02)**: Town Clerk Angie Murphy swore in Zoning Administrator Kayla DiCristina, Theodosia Wade and Billy Wade as witnesses. There were no conflicts of interest by any members of the Board of Adjustment. Zoning Administrator Kayla DiCristina entered into evidence the following: the video recording from the July 28, 2022 meeting where this case was first heard and her staff report with exhibits, presentation and completed application from tonight's meeting.

Property owners are Frances Wade Crozier and William B. Wade.
Applicants are William and Theodosia Wade.

Location is Lot 766 in the Montreat ETJ.
Zoned R-3 Residential and vacant with a proposed single-family dwelling.

The applicants are requesting a variance to reduce the rear setback requirement from Section 503.9 of the MZO to 0 feet on the property to accommodate a new single family dwelling.

At the July 28, 2022 BOA meeting the Board of Adjustment requested that the Mountain Retreat Association close and abandon the right-of-way of Lapsley Lane. The Board continued the variance indefinitely until more information from the MRA was gathered. The Board also recommended that the property owners secure an easement from the Town of Montreat for the water line and portion of Greybeard Trail that encroach onto the property.

On 10/21/22 the MRA withdrew its dedication of Lapsley Lane per the withdrawal of dedication recorded among the Buncombe County Land Records in Deed Book 6269, pages 1134-1136. The applicant submitted a copy of the Buncombe County Department of Health Improvement Permit for Wastewater System Construction. This permit states that the lot is repair exempt

and that additions to or subtractions from the land will nullify this exemption as will any other changes to the property lines. An easement agreement with the Town of Montreat has been prepared by the property owners and includes the water line and portion of Greybeard Trail on the property. The property owners intend to record this document following the Board of Adjustment's approval of the variance request.

The evidentiary hearing was closed.

Martha Chastain moved to grant the variance with a 0' rear setback. Mrs. Chastain reviewed the findings of fact that pertained to this case. Mari Gramling seconded the motion and the motion carried 5/0.

Adoption of 2023 Meeting Schedule

David Neel moved to accept the suggested 2023 BOA Meeting Schedule with November 16th chosen and December 21st chosen as meeting dates around holiday weeks. Mari Gramling seconded and the motion carried 5/0.

Adjournment

Martha Chastain moved to adjourn the meeting. David Neel seconded and the motion carried 5/0.

Danny Sharpe, Acting Chair

Angie Murphy, Town Clerk

Town of Montreat
Zoning Board of Adjustment
Rules of Procedure
Adopted: January 26, 2023

The Montreat Zoning Board of Adjustment (hereinafter “The Board”) shall be governed by Chapter 160D, Chapter 3, of the General Statutes of North Carolina and the Town of Montreat Zoning Ordinance. All members of the Board shall thoroughly familiarize themselves with these laws. The Rules of Procedure set out procedures for the Board of Adjustment, but do not modify provisions of the Town of Montreat Zoning Ordinance or any other applicable Town Ordinances that regulate land use and development.

Article I. Members of Board of Adjustment

Section 1.1 **Membership.** The Board shall consist of seven regular members and two alternate members. Six regular members and the two alternate members shall reside in the Town of Montreat and shall be appointed by the Montreat Board of Commissioners. One regular member shall reside in the Town of Montreat Extraterritorial Jurisdiction and shall be appointed by the Buncombe County Board of Commissioners or, if the Buncombe County Board of Commissioners does not make the appointment, by the Montreat Board of Commissioners.

Comment [STR1]: NCGS Section 160D-302(a) and Zoning Ordinance Section 310.2.

Section 1.2 **Term of Appointment.** The term of each Board member is three years, beginning and ending on January 31st. No Board member shall serve more than two consecutive terms.

Comment [STR2]: Zoning Ordinance Section 310.2

Section 1.3 **New Member Appointments.** During the first regular meeting after the appointment of new Board members, the newly appointed members shall take and subscribe the Oath of Office.

Comment [STR3]: Former Rule 8

Section 1.4 **Alternate Members.** Alternate members shall attend all regular meetings and special meetings and shall be seated when regular members are absent or are unable to participate due to a conflict of interest or when regular member seats are vacant. Regular members who are unable to attend or participate in a meeting shall give prompt notice to the Town Clerk. Upon receiving such notice, the Town Clerk shall notify an alternate member to replace the absent regular member. Assignments shall be rotated between the alternate members when possible. Non-seated regular or alternate members do not participate in discussions, ask questions or vote in hearings. Except at the election of Board officers, at no time shall more than seven members participate officially in any hearing or meeting. Alternate members who were present for the initial hearing and presentation of evidence in a case will be seated at subsequent or continued hearings of that case prior to members or alternate members who were not present.

Comment [STR4]: Former Rule 9

Section 1.5 **Rules of Conduct.** All members shall be subject to the following rules of conduct:

Comment [STR5]: Former Rule 10

- 1) Members serve at the discretion of the Board of Commissioners.

- 2) Faithful and prompt attendance at all meetings of the Board and conscientious performance of the duties required as members of the Board shall be considered a prerequisite of continued membership on the Board.
- 3) No Board member shall participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, (i) a member having a fixed opinion prior to hearing the matter that is not susceptible to change; (ii) undisclosed ex parte communications; (iii) a close familial, business or other associational relationship with an affected person; or (iv) a financial interest in the outcome of the matter.
- 4) No Board member shall vote on any matter deciding an application or appeal unless s/he shall have attended the public hearing on that application or appeal. Provided, however, that if a matter is continued to a subsequent date, a Board member who was not present at the prior meeting may vote on the matter if the Board member has reviewed the minutes of the proceeding and all materials submitted with the application or appeal or at the prior meeting.
- 5) No Board member shall discuss any matter with any person before the Public Hearing on that matter; provided, however, that members may receive and/or seek information from Town staff prior to the Public Hearing pertaining to the date, time and place of the hearing and the materials submitted with the application or appeal.
- 6) Before a matter is determined, Board members shall not express individual opinions on the proper judgment of any case with any person or among themselves other than during deliberations at the hearing. Violations of this Section shall be cause for dismissal from the Board.

Comment [STR6]: See NCGS Section 160D-109(d).

Section 1.6 Absences. Regular members who are unable to attend or participate in a meeting shall give prompt notice to the Town Clerk and Zoning Administrator. Upon receiving such notice, the Town Clerk or Zoning Administrator shall notify an alternate member to replace the absent regular member. Assignments shall be rotated between the alternate members when possible. Non-seated regular or alternate members do not participate in discussions, ask questions or vote in hearings. Except at the election of Board officers, at no time shall more than seven members participate officially in any hearing or meeting. Alternate members who were present for the initial hearing and presentation of evidence in a case will be seated at subsequent or continued hearings of that case prior to regular members or alternate members who were not present.

Section 1.7 Removal. Members may be removed from the Board by the Board of Commissioners for cause, which includes violation of Section 1.5, Rules of Conduct.

Article II. Officers

Section 2.1 Election of Officers. On the date and time of the first regular meeting in January or upon the resignation of the Chair and/or Vice-Chair, the Board shall elect a Chair and/or Vice-Chair through use of the following procedure:

Comment [STR7]: Former Rule 5

- 1) The presiding officer shall open the floor to nominations, at which point the names of nominees shall be put forward by the Board members.

- 2) The submitted names shall be debated. When the debate ends, the presiding officer shall call the roll of the Board members, and each member shall cast his/her vote.
- 3) The nominee receiving the highest number of votes shall be elected.
- 4) The nomination and voting procedure shall be repeated for each officer to be elected. Board members shall have as many votes as there are slots to be filled, but shall not cast more than one vote for a single candidate. Each Board member must cast all of his/her votes and must cast them for different nominees for each slot to be filled.

Section 2.2 Officers and Duties.

Comment [STR8]: Former Rule 6

- 1) Chair. The Chair shall be elected by the full membership, including alternates and extra-territorial members of the Board. The Chair's term of office shall be one year and until his/her successor is elected. S/he shall be eligible for re-election.
- 2) Vice-Chair: The Vice-Chair shall be elected by the Board from within its regular members in the same manner and for the same term as the Chair. S/he shall be eligible for re-election. S/he shall preside in the absence of the Chair, and at such times shall have the same powers and duties as the Chair.
- 3) Secretary: The Secretary shall be elected by the Board from within its regular members in the same manner and for the same term as the Chair. S/he shall be eligible for re-election. The Secretary, subject to the direction of the Chair, shall coordinate with the Town Clerk to keep all records, conduct all correspondence of the Board, arrange for all public notices required to be given, and generally supervise the clerical work of the Board. The Secretary shall affirm the minutes as prepared by the Town Clerk and approved by the Board. The minutes will show the record of all important facts pertaining to each meeting and hearing, every resolution acted upon by the Board, and all votes of members of the Board upon any resolution or upon the final determination of any question, indicating the names of members absent or failing to vote.

Section 2.3 Presiding Officer. The Chair shall preside at all Board meetings if s/he is present. If the Chair is absent, the Vice-Chair shall preside. If both the Chair and Vice-Chair are absent, another member designated by vote of the Board shall preside.

Comment [STR9]: Former Rule 7

The Chair shall have the right to vote in all matters. The Vice-Chair or another member who is temporarily presiding retains all rights of membership, including the right to make motions and the right to vote.

If the Chair becomes actively involved in debate on a particular matter, s/he may designate another Board member to preside over the debate. The Chair shall resume presiding as soon as action on the matter is concluded.

The presiding officer shall have the following powers:

- 1) To administer oaths to witnesses before the Board;

Comment [STR10]: NCGS Section 160D-406(f)

- 2) To ask for motions for consideration or action and to rule motions in or out of order, including any motion patently offered for obstructive or dilatory purposes;
- 3) To determine whether a speaker has gone beyond reasonable standards of courtesy in his/her remarks and to entertain and rule on objections from other members on this ground;
- 4) To subpoena witnesses or to compel the production of evidence when the Board is making a quasi-judicial decision;
- 5) To rule any motion to quash or modify a subpoena;
- 6) To rule on the admissibility of evidence, to entertain and answer questions or procedure, and to call a brief recess at any time; and
- 7) To adjourn in an emergency and to continue any meeting at which there is not a quorum.

Comment [STR11]: NCGS Section 160D-406(g)

Article III. Meetings

Section 3.1 Regular Meetings. The Board shall hold its regular meetings at 5:00 p.m. on the fourth Thursday of each month in Montreat Town Hall. If a regular meeting day is a legal holiday, the meeting will be held the following Thursday at the same time and in the same location as regular meetings, unless otherwise agreed to by a majority vote of the Board. If there are no business item(s), appeal(s) or quasi-judicial matter(s) for the Board to consider during a given month, the regular meeting may be cancelled. The Town Clerk shall maintain and publish the Board's current meeting schedule. The schedule of regular meetings shall also be posted on the Town's website. If the Board changes its schedule of regular meetings, it shall file the revised schedule with the Town Clerk at least seven calendar days before the date of the first meeting held pursuant to the revised schedule.

Comment [STR12]: Former Rule 1

Comment [STR13]: NCGS 143-318.12(d)

Comment [STR14]: NCGS 143-318.12(a)

Section 3.2 Special and Recessed Meetings.

Comment [STR15]: Former Rule 2

- 1) **Special Meetings.** The Board Chair, Vice-Chair or any two members of the Board may at any time call a special meeting by signing a written notice stating the date, time and place of the meeting and the purpose of the meeting. At least 48 hours before the time of a special meeting called in this manner, written notice of the meeting shall be:
 - a) Delivered electronically to the Chair and each Board member;
 - b) Posted on the principal bulletin board in the Town Hall and for information on the bulletin board in the Montreat Post Office;
 - c) Mailed, emailed or delivered to each person who has filed a written request for notice with the Town Clerk; and
 - d) Submitted electronically to the Town of Montreat Sunshine List and social media accounts and posted on the Town's website.

Comment [STR16]: NCGS 143-318.12(b)(2)

Only those matters specified in the notice may be transacted at a special meeting called in this manner

- 2) Recessed Meetings. If the Board recesses a regular or special meeting held pursuant to public notice given in compliance with these Rules of Procedure and North Carolina Open Meetings law and if the Board announces in open session the time, date and place at which the meeting is to be continued, no further notice shall be required. Notice of the time, date and place where a recessed meeting shall be reconvened may be posted on the Town's website.

Comment [STR17]: NCGS 143-138.12(b)(1)

Section 3.3 Cancellation of Meetings. At the Chair's discretion, the regular meeting may be cancelled if there are no quasi-judicial matters to be considered at that meeting, or if so many regular and alternate members notify the Town Clerk and Zoning Administrator that they cannot attend that a quorum will not be present. Within at least 48 hours of the time set for the meeting, written or electronic notice of a meeting cancellation shall be:

Comment [STR18]: Former Rule 3

- a) Delivered electronically to the Chair and each Board member;
- b) Posted on the principal bulletin board in the Town Hall and for information on the bulletin board in the Montreat Post Office;
- c) Mailed, emailed or delivered to each person who has filed a written request for notice with the Town Clerk; and
- d) Submitted electronically to the Town of Montreat Sunshine List and social media accounts and posted on the Town's website.

Section 3.4 Quorum. A majority of the regular membership of the Board, excluding vacancies, shall constitute a quorum. A member who has withdrawn from a meeting without being excused by majority vote of the remaining members present shall be counted as present for purposes of determining whether or not a quorum is present.

Comment [STR19]: Former Rule 15

Section 3.5 Agenda.

- 1) Proposed Agenda. The Town Clerk or Zoning Administrator shall prepare a proposed agenda for each meeting. A Board member may request to have a matter placed on the agenda by written request received by the Town Clerk or Zoning Administrator at least ten calendar days before the meeting. The Town Clerk or Zoning Administrator shall prepare an agenda packet that includes, for each matter on the proposed agenda, as much background information on the subject as is available and feasible to reproduce. Each Board member shall receive a copy of the proposed agenda and accompanying packet, both of which shall be made available for public inspection and/or distribution when it is distributed to the Board members. The cost for reproducing the agenda packet materials for members of the public shall be in accordance with the current Town of Montreat Fee Schedule.
- 2) Adoption of the Agenda. At each meeting, the Board shall discuss and revise the proposed agenda and adopt an agenda for the meeting. The Board may, by majority vote, add to or subtract items from the proposed agenda, except that:
 - a) The Board may not subtract items stated in the notice of a special meeting called by the Chair, Vice-Chair or two Board members, unless those calling the meeting consent to the deletion;

- b) The Board may not add items to the agenda of a special meeting.
- c) If Board members requested items be added to the agenda, written copies of relevant documents connected with those items shall be made available at the meeting to all Board members by the Zoning Administrator and/or the Board member requesting the additional agenda item.
- d) The Board may designate certain agenda items “for discussion and possible action.” Such designation means that the Board intends to discuss the general subject area of that agenda item before making any motion concerning that item.

Comment [STR20]: NCGS 143-318.12

- 3) Open Meetings Requirements. The Board shall not deliberate, vote or otherwise take action on any matter by reference to a letter, number or other designation, or other secret device or method, with the intention of making it impossible for person attending a meeting of the Board to understand what is being deliberated, voted, or acted on. However, this subsection does not prohibit the Board from deliberating, voting, or otherwise taking action by reference to an agenda if copies of the agenda, sufficiently worded to enable the public to understand what is being deliberated, voted or acted upon are available for public inspection at the meeting.

Comment [STR21]: NCGS 143-318.13(c)

Section 3.6 Order of Business. Matters shall be placed on the agenda according to the order of business. By general consent, items may be considered out of the following order. The order of business for each regular meeting shall be as follows:

- 1) Welcome
- 2) Moment of Silence
- 3) Discussion and Approval of Agenda
- 4) Approval of Minutes
- 5) Public Hearings (in accordance with Section 4.11 Conduct of Quasi-Judicial Hearings)
- 6) Old Business
- 7) New Business
- 8) Closed Session (as permitted by law) – Optional
- 9) Return to Open Session and Adjourn or Recess

Section 3.7 Debate. The Chair shall state the motion and then open the floor to debate on it. The Chair shall preside over the debate according to the following general principles:

Comment [STR22]: Former Rule 26

- 1) The maker of the motion is entitled to speak first;
- 2) A member who has not spoken on the issues shall be recognized before someone who has already spoken;
- 3) To the extent possible, the debate shall alternate between opponents and proponents of the measure.

Section 3.8 Action by the Board. The Board shall proceed by motion. Any Board member, including the Chair, may make a motion. Motions require a second. A member may make only one motion at a time. A substantive motion is out of order while another substantive motion is pending. A substantive or procedural motion shall be adopted by a majority of the votes cast, a quorum being present, unless otherwise required by these Rules or the laws of North Carolina. A majority is more than half of the Board members at a meeting where there is a quorum present.

Comment [STR23]: Moved from Rule 27

Section 3.9 Duty to Vote. No present member shall be excused from voting except (i) where the outcome of the matter being considered is reasonably likely to have a direct, substantial and readily identifiable financial impact on the member or (ii) where a member is disqualified from voting in a quasi-judicial matter under N.C.G.S. § 160D-109(d). A member who wishes to be excused from voting shall so inform the presiding officer, who shall take a vote of the remaining members.

Comment [STR24]: Former Rule 28

In all other cases, a failure to vote by a member who is physically present in the meeting room, or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as an affirmative vote.

Section 3.10 Voting By Written Ballot. The Board may choose by majority vote to use written ballots in voting on a motion. Each member voting by written ballot shall sign his or her ballot, and the minutes of the Board shall show the vote of each member voting. The ballots shall be available for public inspection in the Town Clerk's office immediately following the meeting at which the vote took place and until the minutes of that meeting are approved, at which time the ballots may be destroyed.

Comment [STR25]: Former Rule 29

Comment [STR26]: NCGS 143-318.13(b)

Section 3.11 Closed Sessions. The Board may hold closed sessions as provided by law. The Board shall only commence a closed session after a motion to go into closed session has been made and adopted during an open meeting. The motion shall state the purpose of the closed session and must be approved by a majority vote of those Board members present and voting. A motion based on N.C.G.S. 143-318.11(a)(1) to prevent the disclosure of privileged or confidential information or information that is not considered a public record shall also state the name or citation of the law that renders the information to be discussed privileged or confidential. A motion based on N.C.G.S. 143-318.11(a)(3) for attorney consultation or to consider the handling or settlement of claims, judicial actions, mediations, arbitrations or administrative procedures shall identify the parties in each existing lawsuit concerning which the Board expects to receive advice during the closed session. The Board shall terminate the closed session by a majority vote. Only those actions authorized by statute may be taken in closed session. A motion to adjourn or recess shall not be made during a closed session.

Comment [STR27]: Former Rule 37

Section 3.12 Minutes.

Comment [STR28]: Former Rule 38

- 1) Full and accurate minutes of Board proceedings, including closed sessions, shall be kept. In the alternative, the Board may keep a general account of any closed session so that a person not in attendance would have a reasonable understanding of what transpired. These minutes and general accounts shall be open to inspection by the public, except as otherwise provided in this Section. The exact wording of each motion, the name of the member who moved the motion, and the results of each vote shall be recorded in these minutes. On the request of any

Board member, the “ayes” and “nos” upon any question shall be taken. Particular comments made by Board members or other persons may be included in the minutes if the Board so desires.

- 2) Minutes and general accounts of closed session may be sealed by action of the Board. Such sealed minutes and general accounts may be withheld from public inspection so long as public inspection would frustrate the purpose of the closed session. Sealed minutes and general accounts may be unsealed either by Board action or by action of an agent of the Board such as the Town Attorney, if and when the closed session’s purpose would no longer be frustrated by making these records public.
- 3) Any attachment to the minutes must be approved by a majority vote of the Board members.

Article IV. Public Hearings and Quasi-Judicial Decisions of Board

Section 4.1 General. A Public Hearing is part of a regular Meeting or special Meeting of the Board. All notice and other requirements of the Open Meetings Law applicable to Board meetings shall also apply to public hearings. At the time appointed for the Public Hearing, the Chair or presiding officer shall call the hearing to order and then preside over it. When the allotted time expires or when all persons desiring to speak have spoken, the Chair or presiding officer shall declare the hearing closed. The Chair may restrict or elect not to hear comments of a repetitious or irrelevant nature.

Comment [STR29]: Part of Former Rule 16

Section 4.2 Application and Appeal Procedures. All notices of appeal, applications for variance and applications for a Special Use Permit shall be filed with the Town Clerk, who shall refer such applications to the Board when all required materials have been submitted. All appeals and applications shall be made on the forms provided by the Town for that purpose. All information required on the form shall be completed and all required materials shall be submitted before an appeal or application shall be considered as having been filed. When the completed appeal or application has been filed with the Town Clerk, the Zoning Administrator shall immediately notify the Chair of the Board that such appeal or application has been filed.

Comment [STR30]: Zoning Ordinance Section 310.51

Comment [STR31]: Former Rule 21

Section 4.3 Required Materials. All notices of appeal or applications shall be filed together with the following materials:

Comment [STR32]: Zoning Ordinance Section 310.52

Comment [STR33]: Former Rule 22

- 1) A neatly drawn map of the property which is the subject of the appeal or application, drawn to scale and showing the location of any Building and other improvement located on the property and showing any adjoining road;
- 2) If the appeal or variance concerns the elevation of a Building, a drawing showing the elevation of all Buildings and improvements located on the property which is the subject of the appeal or variance application;
- 3) A copy of the deed for the property which is the subject of the appeal or application, a copy of the plat showing such property if one exists, and any contract to purchase or other relevant document;

- 4) Applicable fees as set forth in the current Town of Montreat Fee Schedule, which becomes nonrefundable when the Zoning Administrator gives notice to the Chair of the Board that the completed appeal or application has been filed; and
- 5) Any other materials reasonably required by the Chair of the Board and any other materials required by the Town of Montreat Zoning Ordinance or other applicable Town Ordinances that regulate land use and development.

Section 4.4 The Zoning Administrator shall also provide the Board copies of all documents and exhibits constituting the record upon which an appealed action was taken. The Zoning Administrator shall also provide a copy of the record to the appellant and to the property owner if the appellant is not the owner of the subject property.

Section 4.5 **Time of Hearing.** The Chair will set the date of the hearing in accordance with an annual schedule published in January, maintained by the Town Clerk and made available to the Zoning Administrator in order that s/he may inform applicants of the current schedule. All cases shall be heard within a reasonable time. The Board may continue a Public Hearing that has been convened without further advertisement. The Board shall comply with Section 3.2(2) in recessing and continuing a Public Hearing. If a Public Hearing is set for a given date and a quorum of the Board is not then present, the hearing shall be recessed and continued until the next regular meeting without further advertisement.

Comment [STR34]: Zoning Ordinance Section 310.53

Comment [STR35]: Former Rule 23

Comment [STR36]: NCGS 160D-406(b)

Comment [STR37]: Added sentence

Comment [STR38]: NCGS 160D-406(b)

Section 4.6 **Notice of Hearing.** The Town Clerk or Zoning Administrator shall mail a notice of hearing. The notice of hearing must be deposited in the mail at least ten days, but not more than 25 days, prior to the date of the hearing. The Town shall also prominently post a notice of the hearing on the property that is the subject of the hearing or on an adjacent street right-of-way at least ten days, but not more than 25 days, prior to the date of the hearing. The notice of the hearing shall be mailed to the following:

Comment [STR39]: Former Rule 24

- 1) To the party whose appeal, application, or request is the subject of the hearing;
- 2) To the owner of the property that is the subject of the hearing;
- 3) To the owners of all parcels of land within 250 feet of the parcel of land that is the subject of the hearing; and
- 4) To any other persons entitled to receive notice under the Zoning Ordinance or other applicable Town Ordinances that regulate land use and development.

Comment [STR40]: Zoning Ordinance Section 310.54

Section 4.7 **Appeals of Administrative Decisions.** Except as provided in N.C.G.S. § 160D-1403.01, the Board shall hear and decide appeals from decisions of the Zoning Administrator concerning enforcement and appeals arising out of the Zoning Ordinance or other applicable Town Ordinances that regulate land use and development, in accordance with the following:

Comment [STR41]: NCGS 160D-405(a) and 160D-705(b)

Comment [STR42]: This Section tracks Section 310.41 of the Zoning Ordinance.

- 1) Any person who has standing under N.C.G.S. § 160D-1402(c) or the Town may appeal a determination to the Board of Adjustment by filing a notice of appeal with the Town Clerk. The notice of appeal shall state the grounds for the appeal.
- 2) The Zoning Administrator (or other Town official who made the decision) shall give written notice of the determination to the owner of the property that is the

Comment [STR43]: NCGS 160D-405(b)

subject of the determination and to the party who sought the determination (if different from the owner). The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail. Constructive notice to all persons with standing to appeal the determination may be provided by posting a sign on the affected property for at least ten (10) days in accordance with the procedures established in N.C.G.S. § 160D-403.

- 3) The owner or other party (including those with standing to appeal) shall have 30 days from receipt of the written notice of determination within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt of actual or constructive notice of the decision within which to file an appeal.
- 4) An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from, unless the Zoning Administrator certifies to the Board, after notice of appeal has been filed, that by reason of the facts stated in an affidavit, a stay would cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the Zoning Ordinance or other applicable Town Ordinance that regulates land use or development. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court.

If enforcement proceedings are not stayed, the appellant may file with the Zoning Administrator a request for an expedited hearing of the appeal, and the Board shall meet to hear the appeal within 15 days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a developmental approval or otherwise affirming that a proposed use of property is consistent with the Zoning Ordinance or other applicable Town Ordinance that regulates land use or development shall not stay further review of an application for developmental approvals or permissions to use such property; in these situations the appellant may request and the Board may grant a stay of a final decision of developmental approval applications or building permits affected by the issue being appealed.

Comment [STR44]: NCGS 160D-405(f)

- 5) The Board shall hear and decide the appeal within a reasonable time.
- 6) The official who made the decision, or the person currently occupying that position if the decision maker is no longer employed by the Town of Montreat, shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the Town would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the Board shall continue the hearing.
- 7) When hearing an appeal pursuant to N.C.G.S. 160D-947(e) or any other appeal in the nature of certiorari, the hearing shall be based on the record and the scope of review shall be as provided in N.C.G.S. 160D-1402(j).

- 8) The parties to an appeal that has been made under this subsection may agree to mediation or other forms of alternative dispute resolution.
- 9) In exercising the above powers, the Board may, in conformity with the provisions of N.C.G.S. 160D-406, reverse or affirm, wholly or in part, or may modify the decision appealed from and shall make any order, requirements, decision or determination, and to that end, shall have all of the powers of the Zoning Administrator .

Section 4.8 **Variances.** It shall be the duty of the Board to hear requests for variances and grant or deny said requests in accordance with the guidelines set forth in the Montreat Zoning Ordinance and other applicable Town Ordinances that regulate land use or development.

Comment [STR45]: NCGS 160D-705(d)

Section 4.9 **Special Use Permits.** It shall be the duty of the Board to hear requests for Special Use Permits and grant said permits in accordance with the guidelines set forth in Montreat Zoning Ordinance and other applicable Town Ordinances that regulate land use or development.

Comment [STR46]: NCGS 160D-705(c)

Section 4.10 **Subpoenas.** The Board of Adjustment may subpoena witnesses and compel the production of evidence through the Chair or acting Chair. To request issuance of a subpoena, the applicant, the Town and persons with standing (N.C.G.S. 160D-1402(c)) may make a written request to the Chair explaining why it is necessary for certain witnesses or evidence to be compelled. The Chair shall issue requested subpoenas s/he determines to be relevant, reasonable in nature and scope, and not oppressive. The Chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the Chair may be immediately appealed to the full Board. If a person fails or refuses to obey a subpoena issued pursuant to this Section and N.C.G.S. § 160D-406(g), the Board or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties.

Comment [STR47]: NCGS 160D-406(g)

Section 4.11 **Conduct of Quasi-Judicial Hearings.** Quasi-judicial hearings shall be conducted in accordance with the following procedure:

- 1) Swearing in of all persons who will be called to testify;
- 2) Disclosure of any potential conflicts or biases by Board members and, if necessary, a vote to allow a member to withdraw and be excused from voting on the subject case;
- 3) Disclosure of any Board member's prior exposure to evidence or special knowledge about the subject case, including any ex parte communications;
- 4) Explanation of proceedings;

- 5) Opening of public hearing;
- 6) Testimony and presentation of evidence from Town staff;
- 7) Testimony and presentation of evidence from applicant and other proponents;
- 8) Testimony and presentation of evidence from opponents;
- 9) Rebuttal evidence or arguments from applicant;
- 10) Rebuttal evidence or arguments from opponents;
- 11) Zoning Administrator's closing statement;
- 12) Applicant's closing statement;
- 13) Opponent's closing statement
- 14) Summary of evidence by Board Chair
- 15) Close of public hearing;
- 16) Board deliberation and vote.

Section 4.12 Board members may ask questions following the testimony of any Town staff member, applicant, proponent or opponent. All exhibits must be presented to the Chair and officially ruled upon by the Board before being entered into evidence. The Chair may choose to limit testimony that is deemed repetitious or irrelevant.

Section 4.13 Quasi-Judicial Decisions by the Board.

- 1) The concurring vote of four-fifths of the Board shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For purposes of this Section, vacant positions on the Board and members who are disqualified from voting on a quasi-judicial matter under N.C.G.S. § 160D-109(d) shall not be considered members of the Board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.
- 2) A member of the Board shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's

Comment [STR48]: NCGS 160D-406(i)

Comment [STR49]: NCGS 160D-109(d)

participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

Comment [STR50]: NCGS 160D-109(e)

- 3) The Board shall determine contested facts, make decisions within a reasonable time, and base quasi-judicial decisions on competent, material and substantial evidence in the record. When hearing an appeal, the Board may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision or determination that ought to be made. The Board shall have all the powers of the Town official who made the decision. Quasi-judicial decisions of the Board shall be in writing and shall reflect the Board's determination of contested facts and their application to standards found in the Zoning Ordinance or other applicable Town Ordinance that regulates land use and development. A quasi-judicial decision is effective upon filing the written decision with the Town Clerk. The decision of the Board shall be delivered within a reasonable time by personal delivery, electronic mail, or first-class mail to the applicant, the property owner, and any person who has submitted a written request for a copy, prior to the date the decision becomes effective.

Comment [STR51]: NCGS 160D-406(j)

Section 4.14 Appeals from Quasi-Judicial Decisions of the Board. Every quasi-judicial decision of the Board shall be subject to review by the Superior Court by proceedings in the nature of certiorari pursuant to N.C.G.S. § 160D-1402. Any party with standing under N.C.G.S. § 160D-1402(c) may appeal by filing a petition for review. A petition for review must be filed with the Clerk of Superior Court. Appeals shall be filed within the times specified in N.C.G.S. § 160D-1405(d).

Comment [STR52]: Section 310.7 Zoning Ordinance and NCGS 160D-406(k)

V. Procedural Motions, Amendments and Effective Date

Section 5.1 Procedural Motions.

- 1) Certain Motions Allowed. In addition to substantive proposals, the following procedural motions, and no others, are in order. Unless otherwise noted, each motion is debatable, may be amended and requires a majority vote for adoption. Procedural motions are in order while a substantive motion is pending and at other times, except as noted.
- 2) Order of Priority of Motions. In order of priority (if applicable), the procedural motions are:

Motion 1. To Appeal a Procedural Ruling of the Presiding Officer. A decision of the presiding officer ruling a motion in or out of order, determining whether a speaker has gone beyond reasonable standards of courtesy in his/her remarks, or entertaining and answering a question or parliamentary law or procedure may be appealed to the Board. This appeal is in order immediately after such a decision is announced and at no other time. The member making the motion need not be recognized by the presiding officer and the motion, if timely made, may not be ruled out of order.

- Motion 2.** To Adjourn. The motion may be made only at the conclusion of action on a pending substantive matter; it may not interrupt deliberation of a pending matter. A motion to recess and continue the meeting to a time and place certain shall also comply with the requirements of Section 3.2(2).
- Motion 3.** To Take a Brief Recess.
- Motion 4.** Call to Follow the Agenda. The motion must be made at the first reasonable opportunity or it is waived.
- Motion 5.** To Suspend the Rules. The Board may not suspend provisions of the rules that state requirements imposed by law on the Board. For adoption, the motion requires a vote equal to two-thirds of the actual membership of the Board.
- Motion 6.** To Go Into Closed Session. The Board may go into closed session for one or more of the permissible purposes listed in N.C.G.S. 143-318.11(a). The motion to go into closed session shall cite one or more of these purposes and shall be adopted at an open meeting. A motion based on N.C.G.S. 143-318.11(a)(1) shall also state the name or citation of the law that renders the information to be discussed privileged or confidential. A motion based on N.C.G.S. 143-318.11(a)(3) shall identify the parties in each existing lawsuit concerning which the Board expects to receive advice during the closed session, if in fact such advice is to be received.
- Motion 7.** To Leave Closed Session.
- Motion 8.** To Divide a Complex Motion and Consider It By Paragraph. This motion is in order whenever a member wishes to consider and vote on sub-parts of a complex motion separately.
- Motion 9.** To Defer Consideration. The Board may defer a substantive motion for later consideration at an unspecified time. A substantive motion whose consideration has been deferred expires 100 days thereafter unless a motion to revive consideration is adopted. If consideration of a motion has been deferred, a new motion with the same effect cannot be introduced while the deferred motion remained pending (has not expired). A person who wishes to revisit the matter during that time must take action to revive consideration of the original motion, or else move to suspend the rules.

Motion 10. Call of the Previous Question. The motion is not in order until there have been at least 20 minutes of debate, and every member of the Board has had at least once opportunity to speak.

Motion 11. To Postpone to a Certain Time or Day. In consideration of a motion that has been postponed, a new motion with the same effect cannot be introduced while the postponed matter remains pending. A person who wishes to revisit the matter must either wait until the specified time or move to suspend the rules.

Motion 12. To Amend.

Motion 13. An amendment to a motion must be pertinent to the subject matter of the motion. An amendment is improper if adoption of the motion with that amendment would have the same effect as rejection of the original motion. A proposal to substitute completely different wording for a motion or amendment shall be treated as a motion to amend.

Motion 14. A motion may be amended, and that amendment may be amended but no further amendments may be made until the last-offered amendment is disposed of by vote.

Motion 15. Any amendment to a proposed policy, resolution or order shall be reduced to writing.

Motion 16. To Revive Consideration. The Board may vote to revive consideration of any substantive motion earlier deferred. The motion is in order at any time within 100 days after the day of a vote to defer consideration. A substantive motion on which consideration has been deferred expires 100 days after the deferral unless a motion to revive consideration is adopted.

Motion 17. To Reconsider. The Board may vote to reconsider its action on a matter. The motion to do so must be made by a member who voted with the prevailing side (the majority side except in the case of a tie, in which case the “nos” prevail) and only at the meeting during which the original vote was taken, including a continuation of that meeting through recess to a time and place certain. The motion cannot interrupt deliberation of a pending matter, but is in order at any time before final adjournment of the meeting.

Motion 18. To Rescind or Repeal. The Board may vote to rescind actions it has previously taken or repeal items it has previously adopted. The motion is not in order if rescission or repeal of an item is forbidden by law.

Motion 19. To Prevent Reconsideration for Six Months. The motion shall be in order immediately following the defeat of a substantive motion and at no other time. For adoption, the motion requires a vote equal to two-thirds of the entire membership of the Board. If adopted, the restriction imposed by the motion remains in effect for six months or until the next organizational meeting of the Board, whichever occurs first.

Section 5.2 Renewal of a Motion. A motion that has been defeated may be renewed at any later meeting unless a motion to prevent reconsideration has been adopted.

Section 5.3 Withdrawal of a Motion. A motion may be withdrawn by the introducer at any time before it is amended or before the Chair puts the motion to a vote, whichever comes first.

Section 5.4 Ratification of Actions. To the extent permitted by law, the Board may ratify actions taken on its behalf but without its prior approval. A motion to ratify is a substantive motion.

Section 5.5 Amendment of the Rules. The Board may consider amendments to these Rules at any regular meeting or at any properly called special meeting that includes amendment(s) of the Rules as one of the stated purposes of the meeting, so long as the amendment is consistent with the Town Charter, Town Ordinances, North Carolina statutes and other applicable law, and generally accepted principles of parliamentary procedure. Any recommended rule amendment must be presented to the Montreat Board of Commissioners for formal approval.

Comment [STR53]: NCGS 160D-308

Section 5.6 Effective Date. These Rules of Procedure shall become effective upon the date of its formal approval by the Montreat Board of Commissioners or, in the absence of action by the Board of Commissioners, by the Board of Adjustment.