

Town of Montreat
Planning & Zoning Commission (P&Z)
Special Meeting Agenda
October 5, 2023, 10:30 a.m.
Montreat Town Hall, 1210 Montreat Rd., Black Mountain, NC 28711
And via Zoom: <https://us02web.zoom.us/j/86933563365>

I. CALL TO ORDER

- Welcome
- Moment of Silence

II. ADOPTION OF AGENDA

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

III. SWEARING IN OF NEW MEMBERS

- If present at this meeting, swear in **William Tucker** as a Regular Member of the Town of Montreat's Planning and Zoning Commission.

IV. LEGISLATIVE HEARING

A. Text Amendment, TA-2023-01 – Amendment to the Town of Montreat Zoning Ordinance

Summary: A Text Amendment request submitted by Brian Sineath (of Sineath Construction) to amend Section 201 of the Montreat Zoning Ordinance to consider retaining walls as structures except for the purposes of setback and minimum yard requirements and to add a new section to Article VI – Development Provisions to apply additional provisions to retaining walls.

Suggested Motion: Recommend that the Board of Commissioners approve, approve with revisions, or deny the proposed text amendment (TA-2023-01).

V. PUBLIC COMMENT

VI. NEXT MEETING

- October 19, 2023, 10:30 a.m.

VII. ADJOURNMENT



ORDINANCE AMENDMENT APPLICATION

Town of Montreat Planning and Zoning
1210 Montreat Road, Black Mountain, NC 28711 | (828) 669-8002

REQUIRED FEE: \$50.00 (CASH OR CHECK)

INSTRUCTIONS

All applications for amendments to the Town of Montreat's Ordinances must include a completed and signed application and fee, set forth by the Town of Montreat Fee Schedule. Completed applications are submitted to the Town Clerk. All fees must be made payable to the Town of Montreat. Fees are non-refundable except where an application is withdrawn prior to its consideration by the Planning and Zoning Commission. The Zoning Administrator will determine whether the application is complete following its submittal and will notify the applicant via the contact information listed below of the tentative meeting dates that the Planning and Zoning Commission and Board of Commissioners will hear the proposal and of any action taken or decision made concerning this request. All meetings of the Planning and Zoning Commission and Board of Commissioners are open to the public.

APPLICANT INFORMATION

APPLICANT NAME: Brian Sineath TELEPHONE: 828-645-8518
MAILING ADDRESS: PO Box 1603 Weaverville CITY: _____ STATE: NC ZIP: 28787
LOCAL ADDRESS: _____ CITY: _____ STATE: _____ ZIP: _____
EMAIL: bsineath@sineathconstruction.com

PROPOSED AMENDMENT

ORDINANCE TO BE AMENDED: GENERAL ORDINANCE **ZONING ORDINANCE X**
 SUBDIVISION ORDINANCE WIRELESS COMM. ORDINANCE

CHAPTER, ARTICLE, & SECTION TO BE AMENDED: Zoning Code Section 201 (Definitions)
"Structure"

PROPOSED TEXT IN FULL (ATTACH SHEETS AS NECESSARY): See attached Sheet #1
Only change proposed is addition of 5 words "and required retention wall support"

STATE THE REASON FOR THE REQUEST (ATTACH SHEETS AS NECESSARY): See attached letter from
Richard Wise.

LIST SUPPORTING & ATTACHED DOCUMENTS: Photos of existing structures with retaining
walls supporting driveways.

SIGNATURES AND ACKNOWLEDGEMENT

I, Brian Sineath, hereby certify that all of the information set forth above is true and accurate to the best of my knowledge.

W. Brian Sineath
Signature of Applicant

9-6-23
Date

W. Brian Sineath
Printed Name of Applicant

OFFICE USE ONLY

Complete

Incomplete

Zoning Administrator Signature

Date

Printed Name of Zoning Administrator

Fee: \$50

Paid: ☒ Yes ☐ No

Payment Method: Card 9/21/23

Scheduled Planning and Zoning Commission Meeting Date: _____

Scheduled Board of Commissioner Meeting Date: _____

Sheet #1

added

Structure: Anything constructed or erected, the use of which requires permanent location on the ground, or attachment to something having a permanent location on the ground, including Decks, retaining walls, exterior stairways, Fences, and Signs provided, however, neither a driveway (including associated guardrails and required retention wall support), a walkway (including associated steps and railings), an elevated boardwalk, nor a fence shall be considered a Structure for the purpose of Setback and minimum Yard requirements. Accessibility Features approved pursuant to Section 606.4 and also signs complying with the requirements and limitations of this Ordinance shall not be considered a Structure for the purpose of Setback and minimum Yard requirements.

Richard Wise, Legal Counsel
1022 Highland Colony Parkway, Suite 300
Ridgeland, MS 39157

Tel 601.853.8005
Fax 601.510.9637
[**rick@hcbailey.com**](mailto:rick@hcbailey.com)

H C Bailey Companies

Dear Members of the Planning and Zoning Commission,

This letter is written in support of the proposed text amendment to Montreat's Zoning Code Section 201, (Definitions, "Structure"). The existing definition of a "Structure" is as follows:

"Structure: Anything constructed or erected, the use of which requires permanent location on the ground, or attachment to something having a permanent location on the ground, including Decks, retaining walls, exterior stairways, Fences, and Signs provided, however, neither a driveway (including associated guardrails), a walkway (including associated steps and railings), an elevated boardwalk, nor a fence shall be considered a Structure for the purpose of Setback and minimum Yard requirements. Accessibility Features approved pursuant to Section 606.4 and also signs complying with the requirements and limitations of this Ordinance shall not be considered a Structure for the purpose of Setback and minimum Yard requirements."

As you know, all residential lots have setback areas on all sides, including the street side. Under the Zoning Code no "structures" are allowed within these setback areas. If a driveway were to be considered a "structure", no one could have a driveway to their home because the driveway would necessarily cross the street-side setback area. The current Code deals with this problem by excepting "driveways and associated guardrails" from the definition of a "structure". See above.

Because of the hilly terrain of most Montreat lots, many Montreat homes have driveways that are supported by retaining walls. The retaining walls provide a stable, erosion-proof foundation for the driveway. Examples abound, as indicated by the attached photos of Montreat homes.

However, a strict reading of the above definition may lead a reasonable person to conclude that all retaining walls, even those providing required engineering support for a driveway, are prohibited as "structures" that cannot cross the set-back area. The proposed text amendment would clarify that the exemption for driveways includes the retaining walls that make the driveway possible. The proposed text amendment would simply add 5 clarifying words as follows:

"Structure: Anything constructed or erected, the use of which requires permanent location on the ground, or attachment to something having a permanent location on the ground, including Decks, retaining walls, exterior stairways, Fences, and Signs provided, however, neither a driveway (including associated guardrails **and required retention wall support**), a walkway (including associated steps and railings), an elevated boardwalk, nor a fence shall be considered a Structure for the purpose of Setback and minimum Yard requirements. Accessibility Features approved pursuant to Section 606.4 and also signs complying with the requirements and limitations of this Ordinance shall not be considered a Structure for the purpose of Setback and minimum Yard requirements."

This is consistent with zoning provisions in other jurisdictions, including Ashville which allows walls to be within the setback area if it is a "retaining structure". (Section 7-10-2 (f)(6) "Required Setbacks; Allowable Encroachments into Required Setbacks" and Section 7-10-3).

Judging by the number of existing Montreat homes with driveways supported by retaining walls, Section 201 has not been strictly interpreted in the past. However, in the absence of this text amendment, no future building permit can be issued for any home if the lot's access characteristics are such as to require a retaining wall to support a driveway.

Ms. Kayla DiCristina, Montreat's zoning administrator, has been most helpful in understanding this issue and I want to express my appreciation for her assistance in guiding our efforts regarding this proposed text amendment.

Thank you for your consideration.

Sincerely,



Richard Wise



TOWN OF MONTREAT
P.O. Box 423, Montreat, NC 28757
Tel: (828) 669-8002 | Fax: (828) 669-3810
www.townofmontreat.org

Staff Report TA-2023-01

Text Amendment Request (TA-2023-01) – A Text Amendment request (TA-2023-01), submitted by Brian Sineath, of Sineath Construction, to amend Section 201 of the Montreat Zoning Ordinance to consider retaining walls as structures except for the purposes of setback and minimum yard requirements and to add a new section to Article VI – Development Provisions to apply additional provisions to retaining walls.

Created by:

Kayla DiCristina, AICP,
Zoning Administrator
Town of Montreat

Created for:

Town of Montreat Planning and Zoning Commission
October 5, 2022

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REQUEST SUMMARY

The Zoning Administrator, Kayla DiCristina, AICP, received an application for a Text Amendment request from Brian Sineath of Sineath Construction (“Applicant”) on September 6, 2023.

The Applicant is a contractor for a property located on Hanover Terrace owned by Rick Wise (PIN# 0710676209). The Applicant submitted development plans for a single-family dwelling on PIN# 0710676209 in August 2023 that showed retaining walls within the required front setback of the property. Staff informed the Applicant that the Montreat Zoning Ordinance (MZO) Article II defined retaining walls as “Structures” and requires the proposed retaining walls to comply with the applicable setback requirements for the Zoning District that the property is located in. The Applicant attempted to relocate the retaining walls to meet the required front setback of the Zoning District, but was unable to. After researching other jurisdictions' zoning regulations, the Applicant found that other jurisdictions permit retaining walls in required setbacks. The Applicant then submitted a text amendment to amend the definition of a retaining wall in the MZO Article II to allow retaining walls to be located within required setbacks.

After reviewing the application and conducting their own research, staff proposed a revision to the Applicant’s revised definition. Staff also proposed including a new provision in Article VI regarding site triangles for retaining walls. The revision proposed to the Applicant’s definition ensures easier interpretation by future Zoning Administrators and the public. The new provision under Article VI of the MZO pertaining to site triangles for retaining walls is consistent with what other jurisdictions include in their zoning regulations when allowing retaining walls in setbacks.

EXISTING LANGUAGE

ARTICLE II – DEFINITIONS

201 Definitions

Structure: Anything constructed or erected, the use of which requires permanent location on the ground, or attachment to something having a permanent location on the ground, including Decks, retaining walls, exterior stairways, Fences, and Signs provided, however, neither a driveway (including associated guardrails), a walkway (including associated steps and railings), an elevated boardwalk, nor a fence shall be considered a Structure for the purpose of Setback and minimum Yard requirements. Accessibility Features approved pursuant to Section 606.4 and also signs complying with the requirements and limitations of this Ordinance shall not be considered a Structure for the purpose of Setback and minimum Yard requirements.

PROPOSED LANGUAGE

Color key for amendments:

- Existing language to remain
- ~~Deletion of existing language~~
- Insertion of new language

APPLICANT

ARTICLE II – DEFINITIONS

201 Definitions

Structure: Anything constructed or erected, the use of which requires permanent location on the ground, or attachment to something having a permanent location on the ground, including Decks, retaining walls, exterior stairways, Fences, and Signs provided, however, neither a driveway (including associated guardrails and required retention wall support), a walkway (including associated steps and railings), an elevated boardwalk, nor a fence shall be considered a Structure for the purpose of Setback and minimum Yard requirements. Accessibility Features approved pursuant to Section 606.4 and also signs complying with the requirements and limitations of this Ordinance shall not be considered a Structure for the purpose of Setback and minimum Yard requirements.

STAFF

ARTICLE II – DEFINITIONS

201 Definitions

Structure: Anything constructed or erected, the use of which requires permanent location on the ground, or attachment to something having a permanent location on the ground, including Decks, ~~retaining walls~~, exterior stairways, Fences, and Signs provided, however, neither a driveway (including associated guardrails), a walkway (including associated steps and railings), an elevated boardwalk, nor a fence shall be considered a Structure for the purpose of Setback and minimum Yard requirements. Retaining walls are not considered Structures for the purpose of Setback and minimum Yard requirements and are subject to the provisions of Section 621 Accessibility Features approved pursuant to Section 606.4 and also signs complying with the requirements and limitations of this Ordinance shall not be considered a Structure for the purpose of Setback and minimum Yard requirements.

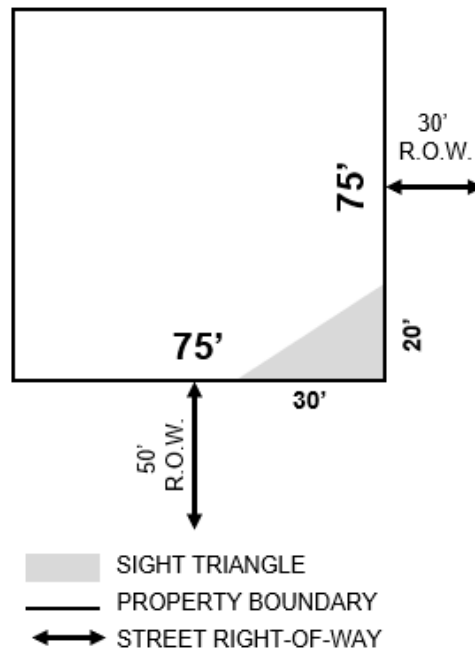
ARTICLE VI – DEVELOPMENT PROVISIONS

621 Retaining Walls

621.1 No retaining wall taller than thirty-six (36) inches shall be constructed within a site triangle as determined by Section 621.11 at any intersection of public or private streets.

621.11 A sight triangle shall be maintained at each corner of a property at the intersection of two streets. The site triangle is a triangular area measured as follows:

| <u>ROW Width</u> | <u>Distance (feet)</u> |
|-------------------------|------------------------|
| <u>< 40'</u> | <u>20'</u> |
| <u>40 ≤ or < 50'</u> | <u>25'</u> |
| <u>≤ 50'</u> | <u>30'</u> |



621.12 Retaining walls taller than thirty-six (36) inches may be constructed in site triangles where, by reason of natural topography, the final height of the retaining wall is less than 36 inches above the roadbed.

STAFF RESEARCH

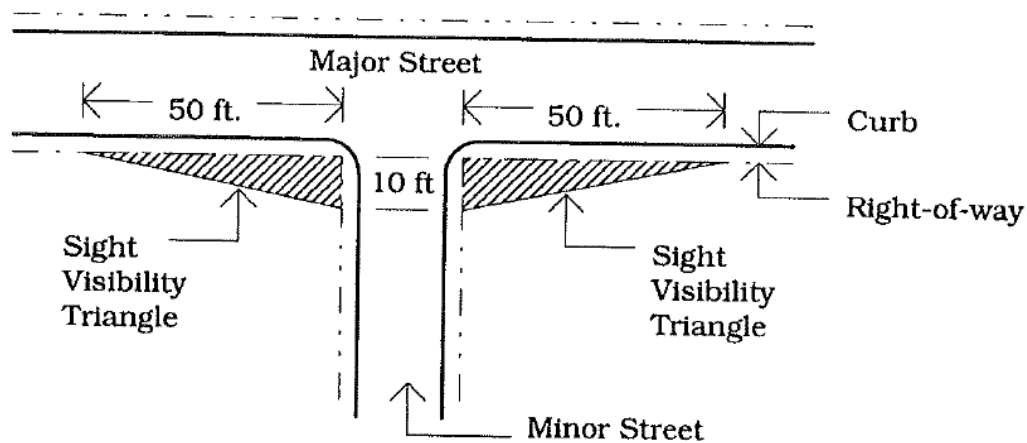
DiCristina reviewed the Unified Development Ordinances of Asheville, Black Mountain, Maggie Valley, and Marshall to examine existing regulations related to retaining walls. Verbatim excerpts from these ordinances are included at the end of this staff report.

City of Asheville Unified Development Ordinance (Chapter 7)

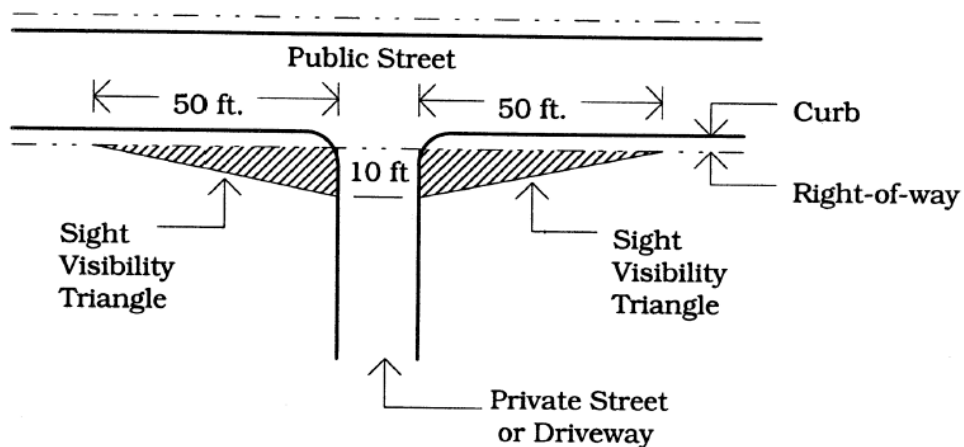
Article III Section 7.2.5 of the City of Asheville's Unified Development Ordinance (UDO) does not include "wall" or "retaining wall" in the definition of a structure, but "wall" and "retaining structure" are defined. Chapter 7 Article X Section 7.10.3(a)(2) of the UDO states that walls within front setbacks may not exceed six feet in height unless they serve as a retaining structure. Those walls within the side or rear setbacks may not exceed eight feet in height unless they serve as a retaining structure. Regardless, per Article X Section 7.10.3(b) of the UDO, no wall is permitted to obstruct the site visibility triangle required by Article XI Section 7.11.2(h) of the UDO. However, Section 7.11.2(h)(5) includes an exemption when the existing grade, by reason of natural topography, rises three feet above

the level of the center of the intersection. Site triangles are determined as follows in Article XI Section 7.11.2(h) of the UDO:

1. At public street intersections with no traffic sign or device → The site triangle is formed from street right-of-way lines and a line connecting them at points 50 feet from the intersection.



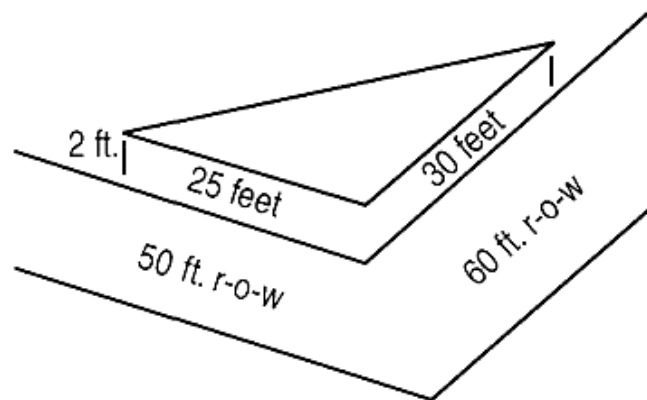
2. All other intersections → The site triangle is formed from a 10-foot side measured along the right-of-way of the minor approach from the right-of-way of the major approach and a 50-foot side measured along the right-of-way of the major approach and the right-of-way of the minor approach.



Town of Black Mountain Unified Development Ordinance (Appendix A)

Section 1.2.3 of the Town of Black Mountain Unified Development Ordinance (UDO) includes the definition of a structure. It is not stated in this definition whether a retaining wall is considered a structure nor are “wall” or “retaining wall” defined. Section 8.3.4(1)(a) of the UDO dictates that no walls may obstruct vision at any intersection of public or private streets, as specified in Section 4.3.6 of the UDO. The UDO does not contain a “Section 4.3.6”, but Section 4.4.6 of the UDO refers to visibility at intersections. Section 4.4.6(d) of the UDO states that fences with heights greater than two feet above the grade of the crown of the adjacent road are not permitted within sight triangles. The following table and image from Section 4.4.6(c) of the UDO are used to determine the required sight triangle area:

| <u>Right-of-way width</u> | <u>Distance (feet)</u> |
|---------------------------|------------------------|
| <50' | 20' |
| 50' | 25' |
| 60' | 30' |
| 70' | 35' |
| 80' | 40' |
| 90' | 45' |
| 100' < | 50' |



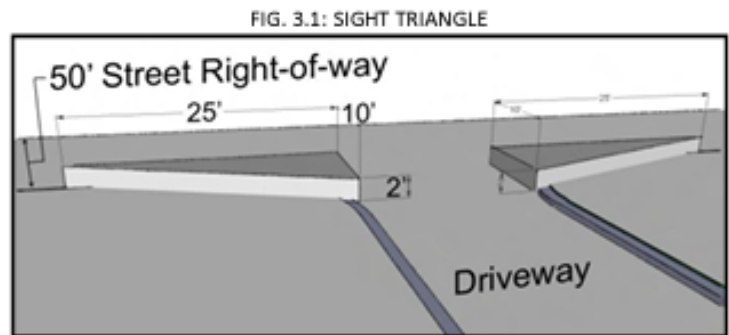
Town of Maggie Valley Unified Development Ordinance (Title XV)

Section 160.02 of the Town of Maggie Valley’s Unified Development Ordinance (UDO) does not include “walls” in the definition of a structure nor are “walls” or “retaining walls” defined. Section 152.05(d) of the UDO states that walls are permitted to encroach into yards. This section goes on to state that if the wall is higher than 3.5 feet, then it may not be placed within the site visibility triangle of a public street, private street, or driveway contained on either the property or adjacent property. No regulation for determining the site triangle is provided in the UDO.

[Town of Marshall Unified Development Ordinance](#)

Appendix A of the Town of Marshall's Unified Development Ordinance (UDO) does not include "walls" in the definition of a structure nor are "walls" or "retaining walls" defined. Per Section 8.5(c) of the UDO, walls may be located in setbacks, but not within rights-of-way or site triangles. Section 3.4.1(f) further stipulates that no wall taller than two feet as measured at street level is permitted within the site triangle. This section defines the site triangle as the area formed by a diagonal line connecting two points located on intersecting property lines (or a property line and the curb or driveway) using the following distances:

| <u>Right-of-way width</u> | <u>Distance (feet)</u> |
|---------------------------|------------------------|
| Driveway | 10' |
| 50' | 25' |
| 60' | 30' |
| 70' | 35' |
| 80' | 40' |
| 90' | 45' |
| 100' < | 50' |



Staff also reviewed the range of right-of-way widths in the Greenspace Agreement to best determine how to apply the site triangle distance requirements. The largest right-of-way width in the Greenspace Agreement is 30 feet from the centerline on either side (total width of 60 feet) and the smallest is 20 feet from the centerline on either side (total width of 40 feet).

PLANNING AND ZONING COMMISSION RECOMMENDATION

Section 309.23 of the MZO requires the Planning and Zoning Commission to provide a recommendation to the Board of Commissioners that addresses consistency with the Comprehensive Plan and other matters as deemed appropriate. A link to the Town of Montreat's Comprehensive Plan is provided below.

[Montreat Tomorrow Comprehensive Plan](#)

Example Language:

The proposed text amendment [is/is not] consistent with Montreat Tomorrow because...

- [identify policies in Montreat Tomorrow which the amendment is/is not consistent with]
- [identify policies in Montreat Tomorrow which the amendment advances/hinders]

For more information on consistency statements, please review [“Plan Consistency and Reasonableness Statements” Guidance prepared by the University of North Carolina – Chapel Hill’s School of Government.](#)

STAFF RESEARCH ORDINANCE EXCERPTS

City of Asheville Unified Development Ordinance (Chapter 7)

Section 7.2.5

Retaining structure means a structure specifically designed to keep or hold an element in a particular place, condition, or position.

Structure means that which is built or constructed. For flood protection regulations, a structure is a walled and roofed building, a manufactured home, a gas or liquid storage tank, or other manmade facility or infrastructure that is principally above ground.

Wall means an upright structure of masonry, wood, plaster or other building material serving to enclose, divide or protect an area.

Sec. 7-10-3. Fences and walls.

(a) *Height standards.*

(1) Fences and walls located outside the minimum front, side, or rear setback may be erected to any height permitted for buildings in the zoning district in which they are located.

(2) Unless otherwise required to comply with other provisions of the Code of Ordinances of the City of Asheville fences and walls located within the minimum front setback shall not exceed six feet in height unless serving as a retaining structure. Fences and walls located within the minimum side or rear setback shall not exceed eight feet in height unless serving as a retaining structure. No fence or wall shall obstruct the site visibility triangles required by subsection 7-11-2(g) of this chapter.

(b) *Sight triangles.* No wall or solid fence higher than three and one-half feet shall be placed within the sight visibility triangle of a public street, private street, or driveway contained either on the property or on an adjoining property. See section 7-11-2 concerning sight visibility triangles.

Sec. 7-11-2. Parking, loading, and access standards.

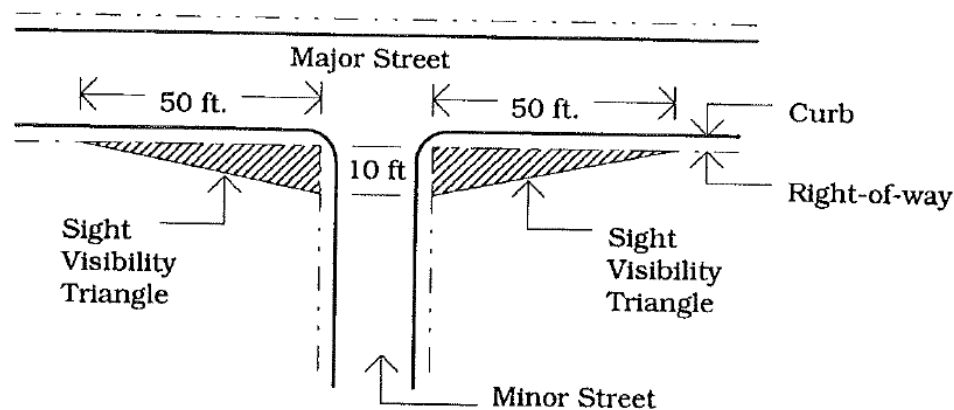
(h) *Sight visibility triangles at street intersections.*

(1) *Sight visibility triangle required.* In order to ensure visibility at intersections, sight visibility triangles shall be maintained at all intersections of public streets, private streets, and driveway access points.

(2) *Public street intersections.* At an intersection of two public streets with no traffic sign or other device, a sight visibility triangle is that triangle formed by the street right-of-way lines and a line connecting them at points 50 feet from the intersection of the street right-of-way lines.

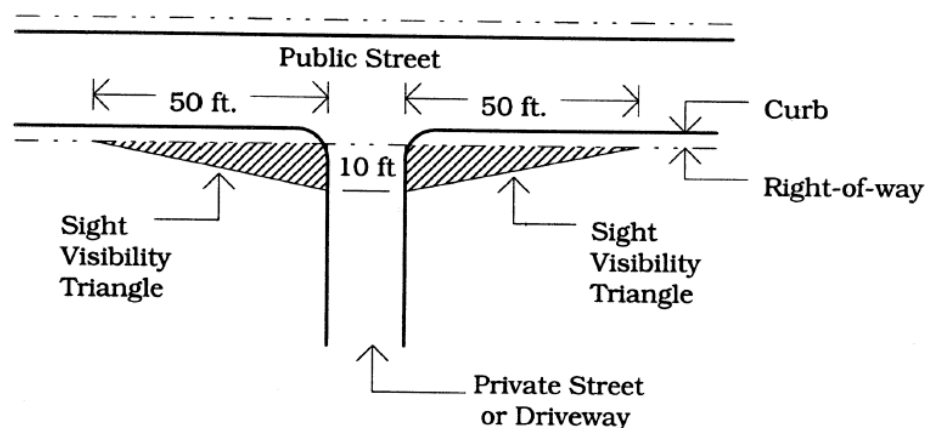
(3) *All other intersections.* At all other types of intersections, a sight triangle is defined as that triangle formed by a ten-foot side measured along the right-of-way of the minor approach from the right-of-way of the major approach, and a 50-foot side measured along the right-of-way of the major approach from the right-of-way of the minor approach.

- a. For intersections formed by two public streets with a traffic control sign or other device, the minor approach is the street which must stop or yield.

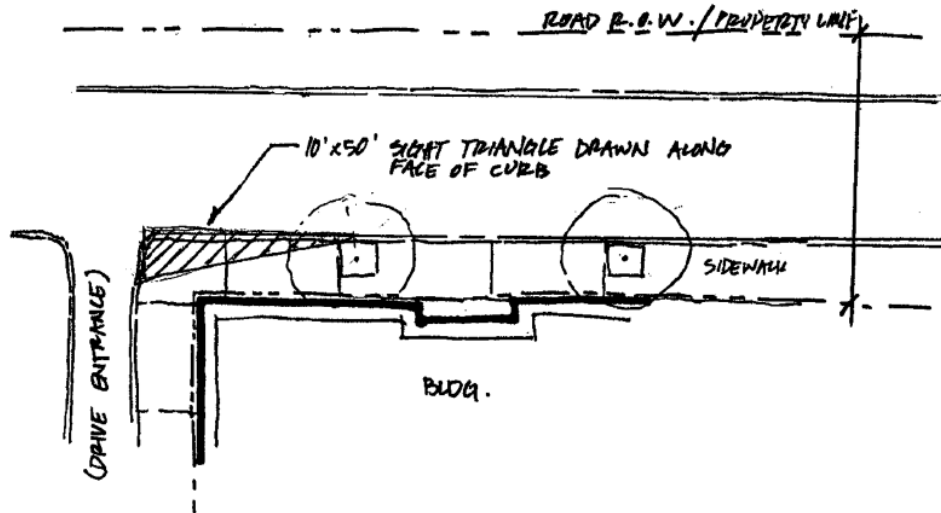


- b. For intersections formed by a public street and a private street or driveway, the public street is the major approach.

- c. For a private street or driveway, the short side of the sight visibility triangle shall be measured along the edge of the private street or driveway.



d. For a public or private street or driveway where the building displays a 0-foot setback, the long side of the triangle shall be measured along the face of curb, with additional measures to be applied if deemed necessary by the city's traffic engineer in accordance with sound engineering principals.



(4) *Sight visibility at state-maintained intersections.* On roadways maintained by the North Carolina Department of Transportation, additional sight visibility triangle requirements may be applied by that department.

(5) *Applicability and exemptions.* Within the triangles identified above, and except as provided below, no structure, sign, plant, shrub, tree, berm, fence, wall, or other object of any kind or parking or storage of automobiles shall be installed, constructed, set out or maintained so as to obstruct cross-visibility at a level between three and ten feet above the level of the center of the street intersection. These restrictions shall not apply to:

- a. Existing natural grades which, by reason of natural topography, rise three feet above the level of the center of the intersection;
- b. Trees having limbs and foliage trimmed in such manner that no limbs or foliage extend into the area between three and ten feet above the level of the intersection;
- c. Fire hydrants, public utility poles, street markers, governmental signs, and traffic control devices;

- d. Any structure, sign, plant, shrub, tree, berm, wall, or fence located in the Central Business District;
- e. Trees which are planted in order to meet the street tree requirement as set forth in subsection 7-11-3(f).

Town of Black Mountain Unified Development Ordinance (Appendix A)

Section 1.2.3

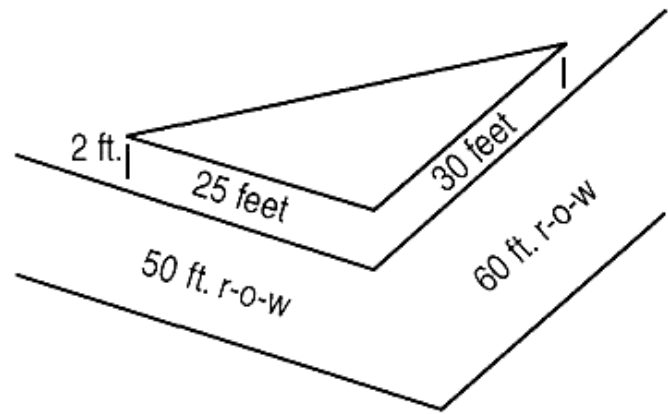
Structure: Anything constructed, installed or portable, the use of which requires a location on a parcel of land, this includes a fixed or moveable building which can be used for residential, business, commercial, agriculture, or office purposes, either temporarily or permanently. "Structure" also includes, but is not limited to, above ground, below ground and permanent swimming pools, cisterns, sewage treatment plants, sheds, and similar accessory construction; however, it does not include landscape features such as ornamental pools, planting boxes, sculpture, birdbaths, open terraces, at-grade bridges and walkways, at-grade slab patios, driveways, small non-permanent shelters for pets, playhouses, open stairs, recreational equipment, flagpoles, underground fallout shelters, air-conditioning compressors, pump houses, wells, mailboxes, outdoor fireplaces, burial vaults, or cemetery marker monuments.

4.4.6 - Visibility at intersections.

C. The following are the distances used to establish a sight triangle as measured from an intersecting right-of-way:

| <u>Right-of-way width</u> | <u>Distance (feet)</u> |
|---------------------------|------------------------|
| <50' | 20' |
| 50' | 25' |
| 60' | 30' |
| 70' | 35' |
| 80' | 40' |
| 90' | 45' |

| | |
|--------|-----|
| 100' < | 50' |
|--------|-----|



D. A sight triangle shall contain no fence, structure, earth bank, hedge, planting, wall or other obstruction between a height greater than two feet above the grade of the crown of the adjacent road as established by the zoning administrator. The following are exempted from this provision:

1. Public utility poles and fire hydrants.
2. Trees trimmed (to the trunk) to a height at least nine feet above the level of the intersection.
3. Other plant species of open growth habit that are not planted in the form of a hedge and which are so planted and trimmed as to leave in all seasons a clear and unobstructed cross-view.
4. A supporting member or appurtenance to a permanent building or sign lawfully existing on the effective date of this ordinance.
5. Official warning signs or signals or other appurtenances required for traffic control.
6. Signs which conform to the sign regulations with supports that do not encroach on the clear-vision area.

8.3.4 - Wall, fence, and berm standards.

Fencing and walls. Except as otherwise noted in this chapter, fences or yard walls are permitted subject to the following regulations:

- 1) General fence and wall requirements.
 - a. Obstruction of view. No fence or wall shall be placed or retained in such a manner as to obstruct vision at any intersection of public or private streets as specified in section 4.3.6.

Town of Maggie Valley Unified Development Ordinance (Title XV)

Section 152.05 Encroachments

D. Vegetative buffers, fences, and walls: Vegetative buffers, fences, and garden/yard walls may encroach into required yards but, if higher than three and one-half (3 1/2) feet, may not be placed within the site visibility triangle of a public street, private street, or driveway contained either on the property or on an adjoining property.

Section 160.02

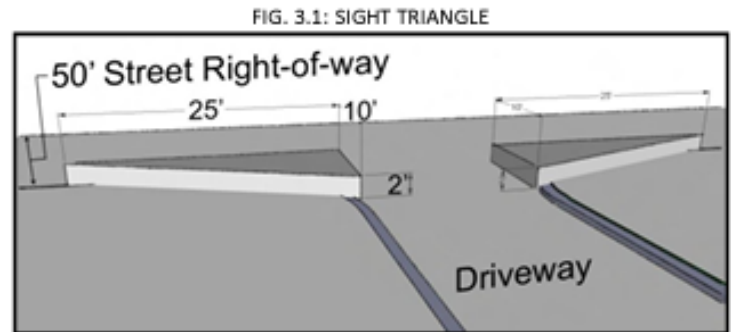
STRUCTURE. Anything constructed or erected, the use of which requires more or less permanent location on the ground or which is attached to something having more or less permanent location on the ground.

Town of Marshall Unified Development Ordinance

3.4.1 General Provisions

(F) No planting, structure, fence, wall, or other obstruction to vision that is more than two (2) feet tall as measured at street level shall be placed in the sight triangle. The sight triangle is the area formed by a diagonal line connecting two points located on intersecting property lines (or a property line and the curb or a driveway). The following are the distances used to establish a sight triangle as measured from an intersecting right-of-way:

| <u>Right-of-way width</u> | <u>Distance (feet)</u> |
|---------------------------|------------------------|
| Driveway | 10' |
| 50' | 25' |
| 60' | 30' |
| 70' | 35' |
| 80' | 40' |
| 90' | 45' |
| 100' < | 50' |



8.5 Fences and Walls

(C) Fences may be located up to the property line, but shall not be located in any right-of-way or sight-triangle. For streets without a right-of-way, fences shall be located a minimum of 10 feet from the edge of pavement. Fences may be located closer than 10 feet to the edge of pavement if there is an existing retaining structure, as long as the fence is no closer to the pavement than the existing retaining structure.

Appendix A

Structure A combination of materials to form a construction for use, occupancy, or ornamentation whether installed on, above, or below the surface of land or water. Anything constructed or erected, the use of which requires more or less permanent location on the ground or which is attached to something having a more or less permanent location on the ground.



TOWN OF MONTREAT

P. O. Box 423, Montreat, NC 28757
Tel: (828) 669-8002 | Fax: (828) 669-3810
www.townofmontreat.org

MEMORANDUM

TO: The Town of Montreat Planning and Zoning Commission

CC: Savannah Parrish (Town Manager), Angela Murphy (Town Clerk), Brian Sineath (Applicant)

FROM: Kayla DiCristina (Zoning Administrator)

SUBJECT: Legal Counsel Suggestion on TA-2023-01

DATE: October 4, 2023

ATTACHMENTS: None

Susan Taylor Rash, the Town of Montreat's legal counsel, provided the following suggestions to staff's proposed revisions regarding the text amendment to the Montreat Zoning Ordinance submitted by Brian Sineath. Staff is in support of these revisions.

ARTICLE II – DEFINITIONS

201 Definitions

Structure: Anything constructed or erected, the use of which requires permanent location on the ground, or attachment to something having a permanent location on the ground, including Decks, retaining walls, exterior stairways, Fences, and Signs provided, however, for the purposes of Setback and minimum Yard requirements, neither a driveway (including associated guardrails), a walkway (including associated steps and railings), an elevated boardwalk, retaining wall nor a fence shall be considered a Structure ~~for the purpose of Setback and minimum Yard requirements.~~ Retaining walls are also subject to the provisions of Section 621. Accessibility Features approved pursuant to Section 606.4 and also signs complying with the requirements and limitations of this Ordinance shall not be considered a Structure for the purpose of Setback and minimum Yard requirements.

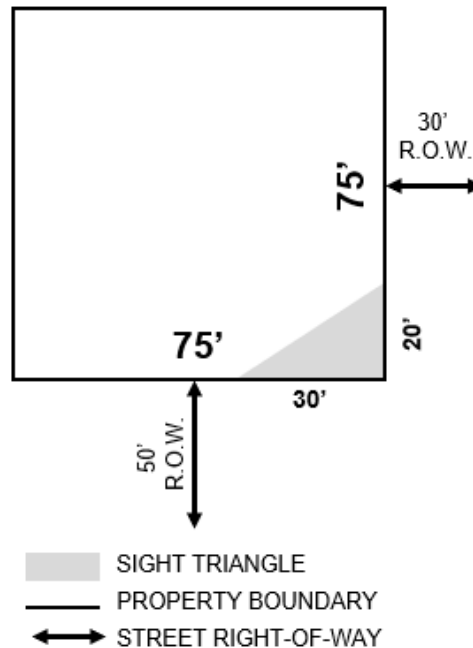
ARTICLE VI – DEVELOPMENT PROVISIONS

621 Retaining Walls

621.1 No retaining wall taller than thirty-six (36) inches shall be constructed within a sight triangle as determined by Section 621.11 at any intersection of public or private streets.

621.11 A sight triangle shall be maintained at each corner of a property at the intersection of two streets. The sight triangle is a triangular area measured from the corner of the property line to a point on the property line located at the distance set forth in the table below and the hypotenuse extending from the distance point on one street across the corner of the property to the distance point of the other street:

| <u>ROW Width</u> | <u>Distance (feet)</u> |
|-------------------------|------------------------|
| <u>< 40'</u> | <u>20'</u> |
| <u>40 ≤ or < 50'</u> | <u>25'</u> |
| <u>≤ 50'</u> | <u>30'</u> |



621.12 Retaining walls taller than thirty-six (36) inches may be constructed in sight triangles below the grade of the adjacent street where, by reason of natural topography, the final height of the retaining wall is less than 36 inches above the pavement of the street located adjacent to the retaining wall.

TA-2023-01

Text Amendment

Montreat Planning and Zoning Commission
October 5, 2023



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RETAINING WALL (*Oxford Dictionary*): A wall that holds back earth or water.



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Existing Language

ARTICLE II - DEFINITIONS

201 Definitions

Structure: Anything constructed or erected, the use of which requires permanent location on the ground, or attachment to something having a permanent location on the ground, including Decks, retaining walls, exterior stairways, Fences, and Signs provided, however, neither a driveway (including associated guardrails), a walkway (including associated steps and railings), an elevated boardwalk, nor a fence shall be considered a Structure for the purpose of Setback and minimum Yard requirements. Accessibility Features approved pursuant to Section 606.4 and also signs complying with the requirements and limitations of this Ordinance shall not be considered a Structure for the purpose of Setback and minimum Yard requirements.

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Proposed Language - Applicant

ARTICLE II - DEFINITIONS

201 Definitions

Structure: Anything constructed or erected, the use of which requires permanent location on the ground, or attachment to something having a permanent location on the ground, including Decks, retaining walls, exterior stairways, Fences, and Signs provided, however, neither a driveway (including associated guardrails and required retention wall support), a walkway (including associated steps and railings), an elevated boardwalk, nor a fence shall be considered a Structure for the purpose of Setback and minimum Yard requirements. Accessibility Features approved pursuant to Section 606.4 and also signs complying with the requirements and limitations of this Ordinance shall not be considered a Structure for the purpose of Setback and minimum Yard requirements.

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Proposed Language - Staff

ARTICLE II – DEFINITIONS

201 Definitions

Structure: Anything constructed or erected, the use of which requires permanent location on the ground, or attachment to something having a permanent location on the ground, including Decks, ~~retaining walls~~, exterior stairways, Fences, and Signs provided, however, neither a driveway (including associated guardrails), a walkway (including associated steps and railings), an elevated boardwalk, nor a fence shall be considered a Structure for the purpose of Setback and minimum Yard requirements. Retaining walls are not considered Structures for the purpose of Setback and minimum Yard requirements and are subject to the provisions of Section 621. Accessibility Features approved pursuant to Section 606.4 and also signs complying with the requirements and limitations of this Ordinance shall not be considered a Structure for the purpose of Setback and minimum Yard requirements.

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Proposed Language – Staff (cont'd)

ARTICLE VI – DEVELOPMENT PROVISIONS

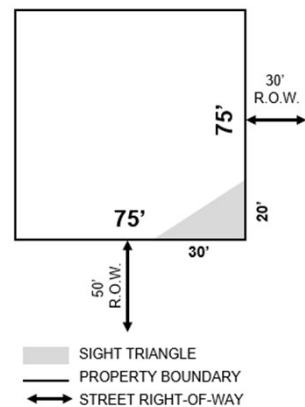
621 Retaining Walls

621.1 No retaining wall taller than thirty-six (36) inches shall be constructed within a site triangle as determined by Section 621.11 at any intersection of public or private streets.

621.11 A sight triangle shall be maintained at each corner of a property at the intersection of two streets. The site triangle is a triangular area measured as follows:

| ROW Width | Distance (feet) |
|---------------|-----------------|
| < 40' | 20' |
| 40 ≤ or < 50' | 25' |
| ≤ 50' | 30' |

621.12 Retaining walls taller than thirty-six (36) inches may be constructed in site triangles where, by reason of natural topography, the final height of the retaining wall is less than 36 inches above the roadbed.



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Proposed Language – Legal Counsel

ARTICLE II – DEFINITIONS

201 Definitions

Structure: Anything constructed or erected, the use of which requires permanent location on the ground, or attachment to something having a permanent location on the ground, including Decks, retaining walls, exterior stairways, Fences, and Signs provided, however, for the purposes of Setback and minimum Yard requirements, neither a driveway (including associated guardrails), a walkway (including associated steps and railings), an elevated boardwalk, retaining wall nor a fence shall be considered a Structure ~~for the purpose of Setback and minimum Yard requirements~~. Retaining walls are also subject to the provisions of Section 621. Accessibility Features approved pursuant to Section 606.4 and also signs complying with the requirements and limitations of this Ordinance shall not be considered a Structure for the purpose of Setback and minimum Yard requirements.

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Proposed Language – Legal Counsel

ARTICLE VI – DEVELOPMENT PROVISIONS

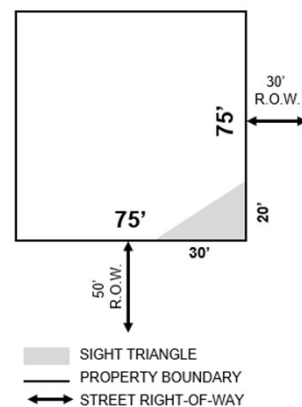
621 Retaining Walls

621.1 No retaining wall taller than thirty-six (36) inches shall be constructed within a sight triangle as determined by Section 621.11 at any intersection of public or private streets.

621.11 A sight triangle shall be maintained at each corner of a property at the intersection of two streets. The sight triangle is a triangular area with sides measured from the corner of the property line to a point on the property line located at the distance set forth in the table below and the hypotenuse extending from the distance point on one street across the corner of the property to the distance point of the other street:

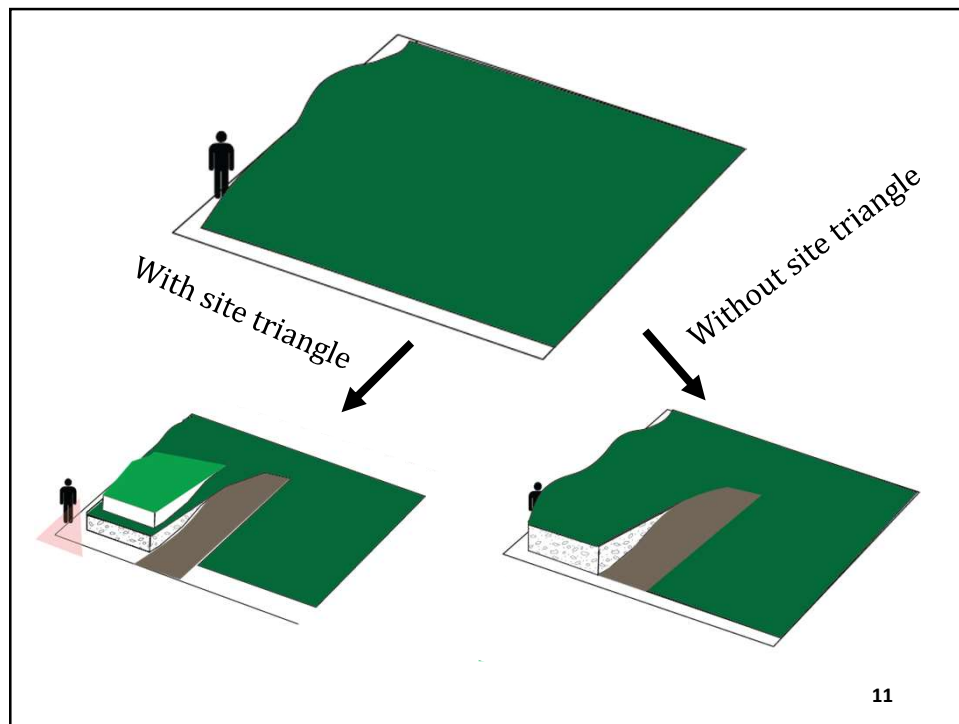
| ROW Width | Distance (feet) |
|----------------|-----------------|
| < 40' | 20' |
| 40' ≤ or < 50' | 25' |
| ≥ 50' | 30' |

621.12 Retaining walls taller than thirty-six (36) inches may be constructed in sight triangles below the grade of the adjacent street where, by reason of natural topography, the final height of the retaining wall is less than 36 inches above the pavement of the street located adjacent to the retaining wall.



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Planning & Zoning Commission *Recommendation*

Provide a recommendation on the proposed text amendment (recommend, recommend with revisions, not recommend) that addresses consistency with the Comprehensive Plan and other matters as deemed appropriate.

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