

Town of Montreat
Board of Adjustment (BOA)
Meeting Agenda
December 21st, 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. ELECTION OF PRESIDING OFFICER

II. CALL TO ORDER

- Welcome
- Moment of Silence

III. CERTIFICATION OF QUORUM

IV. AGENDA ADOPTION

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

V. ADOPTION OF OCTOBER 26, 2023, MEETING MINUTES

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

VI. ORDER OF APPROVAL

- a) Variance Request (VA-2023-02)** – A Variance Request submitted by Charlotte and Mike Sebesta (Property Owners of the Subject Property) for the lot described as PIN#072015277900000 located approximately 700 feet south of the intersection of Appalachian Way and Florida Terrace to Section 504.7 of the Montreat Zoning Ordinance (MZO) to reduce the front setback requirement from 25 feet to 0 on the Florida Terrace side of the Subject Property feet to construct a single-family dwelling.

Suggested Motion: To approve/approve with revisions/deny the written order of approval for VA-2023-02.

VII. NEW BUSINESS

- **Next Meeting:** January 25, 2024, at 5:00 pm.
- **Board Member Term Expirations**

VIII. ADJOURNMENT

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

Board members present: Mike Broussard
David Neel
Arrington Cox
Danny Sharpe
Mari Gramling
Eleanor James

Board members absent: Mark Spence
Martha Chastain

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

Approximately seven members of the public were present. Eleanor James called the meeting to order after a moment of silence.

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=sIMnMkip15c>

Certification of Quorum

Eleanor James certified that a quorum was indeed in attendance.

Agenda Adoption

Danny Sharpe moved to approve the agenda as presented. Mari Gramling seconded and the motion carried 6/0.

Adoption of September 28, 2023 Meeting Minutes

Arrington Cox moved to adopt the September 28, 2023 Meeting Minutes as presented. David Neal seconded and the motion carried 6/0.

Swearing in of New Members

Town Clerk Angie Murphy administered the Oath of Office for returning member Danny Sharpe and new member Mike Broussard.

Order of Approval - Variance Request (VA-2023-01)

A Variance request submitted by Todd Hutchings, who is under contract to purchase the Subject Property, for the lot described as PIN#072015687600000 located about 800 feet south of the intersection of Appalachian Way and Oklahoma Road to the following Montreat Zoning Ordinance (MZO) sections for a proposed single-family dwelling: (1) Section 501.5 to reduce the front setback requirement from 30 feet to 10 feet, (2) Section 501.81 to reduce the side setback requirement from 15 feet to 5 feet on the north side of the Subject Property and to 10 feet on the south side of the Subject Property, and (3) Section 617 to allow the driveway connection for the proposed dwelling on the Subject Property to connect to Oklahoma Road outside of the frontage area described in this section of the MZO.

Danny Sharpe moved to approve the written order of approval for VA-2023-01. David Neel seconded and the motion carried 6/0.

Order of Approval – Special Use Permit Request (SUP-2023-01)

A Special Use Permit to allow a 907-square-foot detached Garage (Accessory Building) with a final height taller than ten feet to be placed in the front yard of a single-family dwelling unit submitted by Dana Bobilya with Harrison Homes (on behalf of the Property Owners, Theodore and Susan Mourouzis and Frank and Margaret DeFilippo) on property in the R-1 Zoning District located on Oak Lane approximately 450 feet west of Oak Lane's intersection with Louisiana Road and described as PIN#071066814100000 within the Town of Montreat

Arrington Cox moved to approve the written order of approval for SUP-2023-01. Mari Gramling seconded and the motion carried 6/0.

Swearing in of Witnesses for Sworn Testimony

Town Clerk Angie swore in the following individuals: Charlotte Sebesta, Mike Sebesta and Montreat Zoning Administrator Kayla DiCristina.

Evidentiary Hearing – Variance Request (VA-2023-02)

Ms. DiCristina reviewed the Conflict of Interest Questions with the Board members. There were no Conflicts of Interest.

Ms. DiCristina then entered into evidence her staff report, exhibits and the applicant's materials.

A Variance Request submitted by Charlotte and Mike Sebesta (Property Owners of the Subject Property) for the lot described as PIN#072015277900000 located approximately 700 feet south of the intersection of Appalachian Way and Florida Terrace to Section 504.7 of the Montreat Zoning Ordinance (MZO) to reduce the front setback requirements from 25 feet to 0 feet on the Florida Terrace side of the Subject Property to construct a single-family dwelling.

The Sebesta's approached the previous Zoning Administrator in 2021 prior to purchasing the lot to inquire about the existing restrictions on the property. No regulatory stream was present on this site. The Sebesta's had the property surveyed and re-platted, negotiated with the Trust for a fair price and purchased the property in 2022. In 2023, the Sebesta's approached the current Zoning Administrator about beginning to build on the property. Per section 305(1) of the Montreat Zoning Ordinance, Chapter K, Article III, no build-up area is permitted within 30 feet of any surface water as measured from the top of the streambank. During the current Zoning Administrator's review, a stream appeared on the Westburne Trust property 1:24,000 scale quadrangle topographic map prepared by the United States Geological Survey map. Due to the presence of the stream on this map, the 30-foot buffer required by Section 305(1) of the Montreat General Ordinance, Chapter K, Article III would be enforced. The Zoning Administrator advised the Sebesta's to obtain a formal stream determination from the North Carolina Division of Water Quality, as this determination would override the local ordinance. On June 9, 2023, a stream determination determined that an intermittent stream now ran through the property and the buffer requirement applied bisecting the development envelope. The 1:24,000 scale quadrangle topographic map prepared by the United States Geological Survey was revised in 2022 and several new regulatory streams were added to the map, including the now intermittent stream on the Sebesta property. This development significantly impacted the allowable building area on Lot 2.

Ms. DiCristina advised the Sebesta's of five different routes to further increase their development envelope. The applicants went before the Board of Commissioners to pursue the fifth option which was to request that a portion of the right-of-way of Florida Terrace be closed and vested with the Subject Property via the process required by N.C.G.S. 160A-299 to increase the development envelope. In the interim period the applicants have chosen to pursue the variance instead.

The Subject Property is considered a double frontage lot. The proposed single-family dwelling must comply with the required setbacks for a dwelling in the I/R Zoning District on a double frontage lot. The Applicant intends to meet the 25-foot setback requirement from Missouri Road and both side yard setbacks. The Zoning Administrator did calculate the reduced setback as 15.3 feet on August 2, 2023. The administrative reduction granted by Section 609 of the

MZO reduced the front yard setback from 25 feet to 15.3 feet.

Mike Sebesta, one of the applicants, gave a brief testimony.

Mayor Pro Tem Mason Blake of 428 Appalachian Way was in attendance at the request of Mayor Tim Helms who could not be present this evening. The Town Council prefers that the Sebestas seek a variance for their project instead of asking for a grant of Town right-of-way.

The Board of Adjustment moved into discussion.

Eleanor James and the Board felt that the first finding of fact was met in that the stream popping up out of nowhere was an unnecessary hardship for the applicants.

Eleanor James and the Board felt that the second finding of fact was met in that the stream was also a hardship resulting from conditions that are peculiar to the property.

Eleanor James and the Board felt that the third finding of fact was met in that the hardship (stream) did not result from actions taken by the applicant.

Eleanor James and the Board felt that the fourth finding of fact was met in that there was not an issue of public safety.

Eleanor James and the Board felt that the remaining findings of fact were indeed met.

Arrington Cox moved to grant VA-2023-02. Danny Sharpe seconded and the motion carried 6/0.

New Business

There was no new business.

Adjournment

Mari Gramling moved to adjourn the meeting. Arrington Cox seconded and the motion carried 6/0. The meeting was adjourned at 6:07 p.m.

Eleanor James, Chair

Angie Murphy, Town Clerk

DRAFT

STATE OF NORTH CAROLINA
BUNCOMBE COUNTY

BEFORE THE TOWN OF MONTREAT
BOARD OF ADJUSTMENT
CASE NO. VA-2023-02

**In the Matter of: The Variance Application
By Charlotte Riddle Sebesta and Michael
Gerard Sebesta (Property Owners of the
Subject Property) for the lot assigned
Buncombe County Tax PIN#
072015277900000 located approximately
700 feet south of the intersection of
Appalachian Way and Florida Terrace to
Section 504.7 of the Montreat Zoning
Ordinance (MZO) to reduce the front
setback requirement from 25 feet to 0 feet
on the Florida Terrace side (the northeast
side) of the Subject Property to construct a
single-family dwelling;**

ORDER

THIS MATTER coming on for hearing before the Town of Montreat Board of Adjustment ("Board") on consideration of the Variance Application to Section 504.7 of the Montreat Zoning Ordinance to reduce the front setback requirement from 25 feet to 0 feet on the Florida Terrace side (the northeast side) of the Subject Property for the lot described in the deed recorded in Book 6246 at Page 284, Buncombe County Registry, assigned Buncombe County Tax PIN# 072015277900000 and located approximately 700 feet south of the intersection of Appalachian Way and Florida Terrace ("Subject Property"), by Charlotte Riddle Sebesta and Michael Gerard Sebesta ("Applicants") pursuant to Section 310.42 and 310.5 of The Zoning Ordinance of the Town of Montreat, North Carolina ("Town") adopted June 10, 2021 ("Ordinance");

A quasi-judicial evidentiary hearing before the Board was held October 26, 2023. Based upon the testimony presented, the documentary evidence, and related materials submitted and after public deliberation, the Board does hereby make the following:

FINDINGS OF FACT

- 1) Notice of the quasi-judicial hearing, pursuant to the Ordinance and state law, was duly and timely given, the hearing was properly advertised, and the Subject Property was properly posted.
- 2) The hearing was held pursuant to Section 310.42 and 310.5 of the Ordinance, and pursuant to N.C. Gen. Stat. §160D-406, on the Variance application submitted by

the Applicants, and the matter is properly before the Board, is within the Board's jurisdiction under the Ordinance, and is ripe for consideration.

- 3) The Applicants filed the application for a Variance to Section 504.7 of the Ordinance to reduce the front setback requirement from 25 feet to 0 feet on the Florida Terrace side (the northeast side) of the Subject Property to construct a single-family dwelling.
- 4) The Subject Property is a vacant lot about 700 feet south of the intersection of Appalachian Way and Florida Terrace. The Subject Property is in the I/R Institutional/Residential Zoning District.
- 6) On or about October 10, 2023, in accordance with Section 310.5 of the Ordinance, the Applicants submitted an application for a Variance to Section 504.7 of the Ordinance to reduce the front setback requirement from 25 feet to 0 feet on the Florida Terrace side (the northeast side) of the Subject Property to construct a single-family dwelling. Based on a review of the documents presented, the Town Zoning Administrator, Kayla DiCristina, AICP, ("DiCristina") determined the application to be complete.
- 7) The public hearing was properly noticed in accordance with all applicable laws and regulations governing the noticing requirements for public hearings. DiCristina and the Applicants presented evidence at the public hearing and were properly sworn in.
- 8) Section 310.42 of the Ordinance provides that in approving a Variance, the Board of Adjustment must find that:
 - (A) Unnecessary hardship would result from the strict application of the Ordinance. It shall not be necessary to demonstrate that, in the absence of the Variance, no reasonable use can be made of the property.
 - (B) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a Variance.
 - (C) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a Variance shall not be regarded as a self-created hardship.

- (D) The Variance is consistent with the spirit, purpose and intent of the Ordinance such that public safety is secured and substantial justice is achieved.
- (E) The Variance requested is the minimum Variance that will make possible the requested Use of the land, Building or Structure.
- (F) The Variance is not a request to permit a Use of land, Building or Structure which is not permitted in the applicable Zoning District.
- 10) The staff report with exhibits, staff presentation, and Variance application were submitted into evidence at the public hearing.
- 11) The Applicant, Mike Sebesta, presented sworn testimony that the Subject Property was subdivided from PIN# 072015281600000, which abuts the Subject Property to the north. Prior to purchasing the Subject Property, the Applicants approached the previous Zoning Administrator about the existing stream. The previous Zoning Administrator did not find a stream on the Subject Property and therefore would not have enforced the 30-foot built-upon area buffer required by Section 305(1) of the Montreat General Ordinance, Chapter K, Article III. Based on this information, the Applicants purchased the Subject Property and believed that the depth of their development envelope began 40 feet from the southwestern property line abutting Missouri Road. However, the current Zoning Administrator and Andrew Moore with the North Carolina Department of Environmental Quality, Division of Water Resources (via a Stream Determination made June 9, 2023) found that an intermittent stream is was present on the Subject Property. The presence of the intermittent stream means that the buffer required by Section 305(1) of the Montreat General Ordinance, Chapter K, Article III is required. With the enforcement of the buffer, the development envelope on the Subject Property now began 75 feet from the southwestern property line abutting Missouri Road. Coupling the buffer requirement with the setback requirements of the I/R Zoning District, the permitted development envelope on the Subject Property is 25 feet by 45 feet, or approximately 1,125 square feet, which will not accommodate the Applicants' desired single-family dwelling. In addition to the impacts of the intermittent stream on the development envelope, the angle of the northeastern property line abutting Florida Terrace makes the placement of a single-family dwelling on the Subject Property difficult.

The Applicant stated that the gravel path abutting the Subject Property to the east is currently used as vehicular access from Florida Terrace to the property assigned Buncombe County Tax PIN# 072015281600000 and dead ends at a point where the remainder of the right-of-way was closed and vested with Montreat College property to the north. The proposed single-family dwelling on the Subject Property will use the gravel path as vehicular access and plan to grade the portion of the path leading into the proposed garage to ensure safe vehicular access. Within the

right-of-way of Florida Terrace, the distance from the proposed single-family dwelling footprint to the gravel path is about 12 feet and the distance to the Florida Terrace roadbed is about 50 feet. This leaves sufficient distance between the proposed single-family dwelling constructed with the requested Variance and the Florida Terrace roadbed. The purpose of this Variance is for the Applicants to construct an accessible retirement home next to the Applicants' family's existing home on PIN# 072015281600000.

- 12) Competent, material and substantial evidence was presented by the Applicants to show the following requirements were met:
- a. Unnecessary hardship would result from the strict application of the Ordinance because the stream appeared on the property after the Applicants approached the previous Zoning Administrator about the stream and between the time the Applicants purchased the Subject Property and when they sought development permits from the current Zoning Administrator.
 - b. The hardship results from conditions that are peculiar to the property because of the presence of the intermittent stream, which not all properties in Montreat have, and the impact the stream has on the Subject Property's development envelope.
 - c. The hardship did not result from actions taken by the Applicants or the property owners because the stream was not created by the Applicants. Further, the Applicants approached the previous Zoning Administrator and did their due diligence in understanding the impediments to development before purchasing the Subject Property.
 - d. The Variance is consistent with the spirit, purpose and intent of the Ordinance such that public safety is secured and substantial justice is achieved because the distance from the proposed single-family dwelling on the Subject Property from the vehicular travelway of Florida Terrace is substantial and prevents a public safety issue from being created by a single-family dwelling abutting a right-of-way with a zero-foot setback.
 - e. A Variance to is the minimum Variance that will make possible the requested Use of the land, Building or Structure because, for this development scenario to occur, the requested Variance is needed to expand the development envelope and accommodate the proposed single-family dwelling.
 - f. The Variance is not a request to permit a Use of land, Building or Structure which is not permitted in the applicable Zoning District. The request is to construct a single-family dwelling which is permitted in the I/R Zoning District.

Therefore, based upon the foregoing FINDINGS OF FACT, and Section 310.42 of the Ordinance, the Board hereby makes the following:

CONCLUSIONS OF LAW

- 1) This Board has jurisdiction to hear and decide applications for Variances. This application is within that jurisdiction.
- 2) The Applicants' application for the Variance is complete.
- 3) If completed as proposed in the application, the Applicants' development will comply with all other requirements of the Ordinance.
- 4) Unnecessary hardship would result from the strict application of the Ordinance.
- 5) The hardship results from conditions that are peculiar to the property, such as location, size, or topography.
- 6) The hardship did not result from actions taken by the Applicants or the property owners.
- 7) The Variance is consistent with the spirit, purpose and intent of the Ordinance such that public safety is secured and substantial justice is achieved.
- 8) The Variance approved is the minimum Variance that will make possible the requested Use of the land, Building or Structure.
- 9) The Variance is not a request to permit a Use of land, Building or Structure which is not permitted in the applicable Zoning District.
- 10) The application for a Variance submitted by the Applicants should be approved.

NOW, THEREFORE, IT IS ORDERED, based upon the foregoing Findings of Facts and Conclusions of Law, and by a vote of 6 in favor and 0 against of the voting Board members present at the October 26, 2023 meeting, upon a duly made motion and second, to approve the Applicants' application for a Variance to Section 504.7 of the Ordinance to reduce the front setback requirement from 25 feet to 0 feet on the Florida Terrace side of the Subject Property to construct a single-family dwelling, the VARIANCE IS HEREBY GRANTED.

ORDERED this ____ day of ____ 2023.

TOWN OF MONTREAT BOARD OF ADJUSTMENT

By: _____
_____, Chair

Attest:

Angie Murphy, Clerk to the Board