

**Town of Montreat  
Board of Adjustment (BOA)  
Meeting Agenda  
March 28, 2024, 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** (*Packet pages 1 - 2*)

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

IV. **SWEARING IN OF NEW MEMBERS**

- If present at this meeting, swear in **George Sawyer** as a Regular Member of the Town of Montreat's Board of Adjustment.

V. **ADOPTION OF FEBRUARY 22, 2024, MEETING MINUTES** (*Packet pages PENDING*)

- **Suggested Motion:** To adopt the February 22, 2024, Meeting Minutes as drafted/amended.

VI. **ORDER OF APPROVAL**

- **Variance Request (VA-2023-03)** – A Variance Request (VA-2023-03) submitted by John Hennis (on behalf of the Property Owners, Dowd Montreat, LLC) to Chapter K Article IV Section II(4)(a) of the Montreat General Ordinance to increase the Approved Graded Area from 40% to 85.2% and to Chapter K Article IV Section II(4)(j) of the Montreat General Ordinance to increase the approved development intensity ratio from 0.30 to 0.472 on property in the R-2 Zoning District located at 325 North Carolina Terrace approximately 960 feet east of the intersection of North Carolina Terrace and West Virginia Terrace and described as PIN# 071096598200000 within the Town of Montreat.

**Suggested Motion:** To approve/approve with revisions/deny the written order of approval for VA-2023-03.

*Staff materials (Packet pages 3 - 8)*

VII. **NEW BUSINESS**

- Board of Adjustment Training

VIII. **ADJOURNMENT**

**STATE OF NORTH CAROLINA  
BUNCOMBE COUNTY**

**BEFORE THE TOWN OF MONTREAT  
BOARD OF ADJUSTMENT  
CASE NO. VA-2023-03**

**In the Matter of: The Variance request submitted by John Hennis (on behalf of the Property Owner, Dowd Montreat LLC) to Chapter K Article IV Section II(4)(a) of the Montreat General Ordinance to increase the Approved Graded Area from 40% to 85.2% and to Chapter K Article IV Section II(4)(j) of the Montreat General Ordinance to increase the approved development intensity ratio from 0.30 to 0.472 on property in the R-2 Zoning District located at 325 North Carolina Terrace approximately 960 feet east of the intersection of North Carolina Terrace and West Virginia Terrace and described as PIN# 071096598200000 within the Town of Montreat.**

**ORDER**

THIS MATTER coming on for hearing before the Town of Montreat Board of Adjustment ("Board") on consideration of the Variance Application to Chapter K Article IV Section II(4)(a) of the Montreat General Ordinance to increase the Approved Graded Area from 40% to 85.2% and to Chapter K Article IV Section II(4)(j) of the Montreat General Ordinance to increase the approved development intensity ratio from 0.30 to 0.472 submitted by John Hennis (the "Applicant") on behalf of the Property Owner, Dowd Montreat, LLC ("Property Owner") on property located at 325 North Carolina Terrace as described in the deed recorded in Book 2218 at Page 897, Buncombe County Registry, assigned Buncombe County Tax PIN# 071096598200000, approximately 960 feet east of the intersection of North Carolina Terrace and West Virginia Terrace ("Subject Property") within the Town of Montreat ("Town") pursuant to Section 310.5 of the Montreat Zoning Ordinance ("MZO") adopted June 10, 2021 and Chapter K Article IV Section II(4)(h) of the Montreat General Ordinance ("MGO") adopted June 11, 2011.

A quasi-judicial evidentiary hearing before the Board began on January 25, 2024, and was continued to February 22, 2024. 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 on January 25, 2024, and February 22, 2024, pursuant to the MZO and state law, was duly and timely given, the hearing was properly advertised, and the Subject Property was properly posted.
- 2) The hearing on January 25, 2024, and February 22, 2024, was held pursuant to Section 310.5 of the MZO, and pursuant to N.C. Gen. Stat. §160D-406, on the Variance application submitted by the Applicant, and the matter is properly before the Board, is within the Board's jurisdiction under the MZO, and is ripe for consideration.
- 3) Section 310.42 of the MZO provides that in approving a Variance, the Board of Adjustment must find:
  - (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.
- 4) The Subject Property is owned by the Property Owner, obtained via the deed recorded in the Buncombe County Register of Deeds at Book 2218 at Page 897 dated and recorded on January 6, 2000.
- 5) The Subject Property is zoned R-2 and contains three single-family dwellings. The Subject Property has a slope of 44.8% per the Buncombe County Slope Calculator. The Subject Property is a Non-conforming Improved Lot under Chapter K, Article

IV of the MGO. The existing Aggregate Graded Area on the Subject Property is 62%.

- 6) The MGO Chapter K Article IV Section (II)(4)(h) requires that Non-conforming Improved Lots subject to the provisions contained in Chapter K Article IV that exceed the limits for grading and impervious areas be combined with contiguous lots in the same ownership before further development is permitted. The Property Owner does not own either of the contiguous lots to the east or west of the Subject Property so there is no possibility of combining adjacent lots to increase conformity. This section states that when there is no possibility of combining adjacent lots, a Variance must be obtained from the Board of Adjustment before any additional improvements are permitted for grading or increasing the impervious area on the Subject Property.
- 7) On or about December 20, 2023, in accordance with Chapter K Article IV Section (II)(4)(h) of the MGO and Section 310.5 of the MZO, the Applicant submitted an application on behalf of the Property Owner for a Variance to Chapter K Article IV Section II(4)(a) of the MGO to increase the Approved Graded Area from 40% to 89.3% and to Chapter K Article IV Section II(4)(j) of the MGO to increase the approved development intensity ratio from 0.30 to 0.49 to allow the construction of a new driveway, addition, and Detached Garage on the Subject Property. Following the January 25, 2024, Board hearing, the Applicant modified the Property Owner's development plans to request only a new driveway, addition, and parking spaces. The Variance request to Chapter K Article IV Section II(4)(a) of the MGO was modified to request an increase in the Approved Graded Area from 40% to 85.2% instead of 89.3%. The requested Variance to Chapter K Article IV Section II(4)(j) of the MGO was also modified to request an increase in the approved development intensity ratio from 0.30 to 0.472 instead of 0.49. Based on a review of the documents presented at the time of the initial application, the Town Zoning Administrator, Kayla DiCristina, AICP, ("DiCristina") determined the application to be complete.
- 8) The public hearing on January 25, 2024, was properly noticed in accordance with all applicable laws and regulations governing the noticing requirements for public hearings. DiCristina, the Applicant, Scott Boylard (the Applicant's Landscape Architect, Creative Development Solutions), Tiffany Prudhomme (the Applicant's Architect, Prudhomme Architecture & Interior Design), Charlie and Katie Morris (adjacent Property Owners of PIN# 071096483700000, 321 North Carolina Terrace) presented evidence at the public hearing and were properly sworn-in.
- 9) The staff report with exhibits, staff presentation, Variance application, a site plan presented by the Applicant at the January 25, 2024, meeting, and a letter of opposition from Charlie Morris (on behalf of the adjacent Property Owners of PIN#

071096483700000, 321 North Carolina Terrace) were submitted into evidence at the public hearing.

- 10) The Applicant presented sworn testimony that the Applicant is the spouse of one of the members of the LLC Property Owner and was representing the Property Owner of the Subject Property in this matter. The existing single-family dwelling on the southeastern side of the Subject Property was built in 1906. The Zoning Administrator testified that Buncombe County Property Records indicate that the other two single-family dwellings were built in 1930. The Applicant testified that since the Property Owner has owned the Subject Property, the LLC members have renovated and updated the interior of the single-family dwellings. Given the age of the houses, the goal of this application was to improve accessibility. The members of the LLC Property Owner plan to retire to the Subject Property. The existing sidewalks on the North Carolina Terrace side of the Subject Property are the only pedestrian access to the three existing single-family dwellings and are difficult for older people to traverse. The only direct pedestrian access to the dwellings is via a small gondala system. The northeastern part of the Subject Property abutting West Virginia Terrace is unused and this Application is a request to add parking and improve access to the existing dwellings. The Applicant testified that vehicles weren't prevalent when the existing dwellings were built so no space for parking and access on the Subject Property, other than by pedestrians, was allotted.

The Applicant provided a new site plan at the January 25, 2024, Board meeting that the Board entered into evidence. This site plan was drafted in response to a letter sent to the Board from the adjacent Property Owners of PIN# 071096483700000 (321 North Carolina Terrace). The new site plan showed the deletion of a rock apron on the west side of the Subject Property and the redirection of stormwater eastward on the Subject Property. The site plan also shows an additional inlet in the proposed driveway. The Applicant testified that this new design addressed the concerns voiced in the letter sent to the Board from the adjacent Property Owners of PIN# 071096483700000 (321 North Carolina Terrace).

The Applicant testified in response to a Board Member that the proposed Detached Garage is to be constructed to the west of the northernmost single-family dwelling that will be removed. This location was chosen instead of constructing the Detached Garage in the dwelling's existing footprint because there isn't enough space to create a safe slope for the driveway and provide additional area for a vehicle to turn around. Regarding erosion and sediment control, the Applicant is not required to provide a formal Erosion and Sediment control plan but testified that the Property Owner will include erosion and sediment management measures during construction. The Applicant also testified that concerns of stability on the Subject Property are addressed by the geotechnical report, which states that if the project is constructed as proposed there will be no stability issues.

Regarding stormwater management plans for the proposed development, the Applicant testified that the proposed development will improve the stormwater management capabilities on the Subject Property and address the concerns voiced in the testimony and letter provided by the adjacent Property Owners of PIN# 071096483700000 (321 North Carolina Terrace). The Applicant explained that the proposed curbs in the driveway push water towards inlets so that it will be properly managed instead of flowing onto the adjacent property. In response to an inquiry by the Board, the Applicant testified that the Property Owner cannot use permeable pavers to reduce the impervious surface figure because the permeable pavers behind the retaining wall for the driveway may compromise the integrity of the wall due to water. The Applicant testified that the Property Owner's team has 40 years of construction experience. Following construction, the Applicant plans to employ a management firm to monitor and maintain the drains regularly and consistently.

In response to an inquiry by the Board, the Applicant testified that the Detached Garage is a wanted amenity not a needed amenity. The Board requested that the Detached Garage be removed from the plans, which the Applicant consented to do.

- 11) Scott Boylard (the Applicant's Landscape Architect, Creative Development Solutions) presented sworn testimony that Creative Development Solutions prepared the plan sets submitted into evidence. Boylard is a Landscape Architect with 30 years of experience. Boylard testified that the Property Owner had gone above and beyond in addressing stormwater on the Subject Property and that Boylard is confident that no new stormwater management issues would be generated from this project. Stormwater would be captured better with the proposed development than it currently is. Boylard testified that currently, stormwater flows onto North Carolina Terrace from the Subject Property if it is not absorbed into the soil. New stormwater management measures will be installed to manage the new impervious surfaces and improve existing stormwater management on the Subject Property. Boylard explained that the proposed driveway is planned to be asphalt and that permeable pavers would likely not be able to be used on the sloped portion of the driveway.

In response to testimony provided by the adjacent Property Owners of PIN# 071096483700000 (321 North Carolina Terrace), Boylard explained that when designing the stormwater management system for the Subject Property, Creative Development Solutions examined the watershed along with the improvements proposed. Stormwater management plans are not done across property lines. Currently, stormwater flows from the Subject Property to the adjacent property (PIN# 071096483700000, 321 North Carolina Terrace) to a degree and the new system will capture that stormwater along with any new stormwater generated by

the proposed improvements. Boylard testified that following construction, less stormwater will go on the adjacent property (PIN# 071096483700000, 321 North Carolina Terrace).

Regarding the proposed retaining wall, the retaining wall varies in height between two and eight feet across the Subject Property. The curb along the inside of the retaining wall acts as a channel to direct stormwater into the outlets. The rock swales and outlets will collect stormwater on new impervious surfaces and provide the capture of the equivalent of half an Ingles parking lot. In response to an inquiry from the Board, Boylard testified that the existing stone wall on the north side of the Subject Property will not be used nor touched to protect its integrity.

- 12) Tiffany Prudhomme (the Applicant's Architect, Prudhomme Architecture & Interior Design) presented sworn testimony that the goal of this project was to improve what is existing on the Subject Property to make the existing one-hundred-year-old houses last another hundred years. Further, the goal is to give long-term use and improve accessibility to the dwellings given that the stairs and existing access are unsafe.
- 13) Charlie Morris (adjacent Property Owner of PIN# 071096483700000, 321 North Carolina Terrace) presented sworn testimony that their property is directly adjacent to the work being proposed on the Subject Property. Morris testified that they are supportive of efforts to modernize and improve the livability of the historic homes, but have concerns about the impact on the hillside and their existing home. Last spring, Morris worked with a foundation expert and contractor to address existing issues with the front porch of their dwelling adjacent to the western side of the Subject Property. They installed new stormwater management measures to direct water away from the home and had to do structural work on the porch, including redoing the rimband between the foundation and floorboards and installing structural supports. Morris voiced concern over the existing brick wall behind their home being affected by the grading on the Subject Property. Morris testified that the hillside is very steep in the area of the proposed improvements on the Subject Property and they are concerned about new concrete being added in this area. Morris testified that their property already gets water off of West Virginia Terrace and, despite the revised plans, they are still concerned over the size of the new driveway and future maintenance of the proposed stormwater management measures. Morris questioned whether an engineer had been involved with the plan preparation and hoped other alternatives had been considered. Morris stated that they support the Hillside Development Ordinance. In response to an inquiry by the Board, they were unsure how close the applicant's existing westernmost single-family dwelling is to their property line and their home. Morris further responded to another inquiry by the Board that they park on North Carolina Terrace and have no off street parking on their property .

- 14) Katie Morris (adjacent Property Owner of PIN# 071096483700000, 321 North Carolina Terrace) presented sworn testimony that they are not Architects or Landscape Architects. Morris testified that they have experience with catch basins and that they get clogged. Morris voiced concern over the driveway coming along the shared property line between their property and the Subject Property. Their property already gets stormwater from West Virginia Terrace and the Subject Property. The wooded area of their property allows some of the stormwater to be collected, but not all of it. Morris stated that paving on the back slope of the Subject Property will prevent water from being able to permeate through the ground and that paved surfaces create floods below. Morris testified that experience shows that these systems don't always work especially if they are not being inspected and maintained.
- 15) The Board requested revisions to the Applicant's development plans based on the testimony from the Applicant. The Applicant testified that the Variances are needed to provide parking and accessibility for aging homeowners. The Applicant further stated that the Detached Garage is a want, not a need and could be removed. To meet Section 310.42(e) of the MZO, the Board asked for the Detached Garage to be removed from the plans and the approved graded area and development intensity ratio recalculated. The Applicant consented and the public hearing for this Application was continued to the Board's next regular meeting at 5:00 pm on February 22, 2024 in Town Hall (1210 Montreat Road).
- 16) The continued public hearing on February 22, 2024, was properly noticed in accordance with all applicable laws and regulations governing the noticing requirements for public hearings. The public hearing was reopened as new evidence was presented by DiCristina, the Applicant, and the adjacent Property Owner. DiCristina, the Applicant, Scott Boylard (the Applicant's Landscape Architect, Creative Development Solutions), Tiffany Prudhomme (the Applicant's Architect, Prudhomme Architecture & Interior Design), Ian Johnson (the Applicant's Geotechnical Engineer, Kessler Engineering Group), Chris Brock (the Applicant's General Contractor, Brock Builders, Inc.), and Mary Standaert (118 Shenandoah Terrace) presented evidence at the public hearing and were properly sworn in. Prudhomme and Brock did not present sworn testimony on February 22, 2024.
- 16) The staff report with exhibits, revised Variance application, and a notarized letter of opposition from Charlie Morris (on behalf of the adjacent Property Owners of PIN# 071096483700000, 321 North Carolina Terrace) were submitted into evidence at the public hearing.
- 17) The Applicant presented sworn testimony that the Applicant is the spouse of one of the members of the LLC Property Owner and represents the Property Owner of the Subject Property in this matter. The Applicant appeared before the Board last month and incorporated comments from the Board and the Morris family (the



adjacent property owners of PIN# 071096483700000, 321 North Carolina Terrace) into the new plans. At the request of the Board and to address concerns of the Morris family, the Applicant removed the proposed Detached Garage, redirected additional stormwater away from the western adjacent property, and reconfigured the driveway. As part of these revisions, the Applicant recalculated the Variances requested to the Approved Graded Area and development intensity ratio. Both of these figures decreased. The Applicant's revised plans also reflect a concrete driveway as recommended by the Geotechnical Report. In response to the notarized letter from the adjacent property owners of PIN# 071096483700000, (321 North Carolina Terrace), the Applicant testified that the Property Owner planned to landscape the portion of the retaining wall facing the adjacent property to the west with vines or evergreen plantings. The Applicant addressed the request for the retaining wall by testifying that moving the retaining wall back ten feet, as requested, will increase the grade of the driveway and negatively impact the ability of cars to turn around. The Applicant explained that the retaining wall decreases in size as one moves northward on the property. In response to an inquiry by the Board, the application's hardship is based on improving pedestrian access to the existing dwellings. Additionally, the Applicant stated that the unmaintained gutters observed on the Subject Property by the Board were due to the management company hired by the Applicant not doing their duty. This issue has since been resolved by the Applicant.

- 18) Scott Boylard (the Applicant's Landscape Architect, Creative Development Solutions) presented sworn testimony that they prepared the new plan sets submitted into evidence. They testified that the Applicant's revised plans reflect a concrete driveway and that the width of the parking area is designed to allow cars to turn around. Boylard explained that the retaining wall decreases in size as one moves northward on the property and that this design allows the proposed development to disturb less land. Boylard also explained that the new plans show additional inlets to address stormwater concerns voiced by the adjacent property owners of PIN# 071096483700000 (321 North Carolina Terrace).
- 19) Ian Johnson (the Applicant's Geotechnical Engineer, Kessler Engineering Group) presented sworn testimony that they prepared the geotechnical analysis for the Subject Property and proposed development. Johnson recommends a concrete driveway instead of asphalt for surfacing, which the Applicant's revised plans reflect.
- 20) Mary Standaert (118 Shenandoah Terrace) presented sworn testimony that she is a member of the public and not an adjacent property owner. Standaert voiced concern over the light reflective value requirement of the Hillside Development Ordinance and the white of the concrete driveway. Standaert requested that a stain be applied to the driveway.

- 21) Competent, material, and substantial evidence was presented by the Applicant to the Board at the January 25, 2024, and February 22, 2024, public hearings to show the following requirements were met:
- a. Unnecessary hardship would result from the strict application of the Ordinance because the Property Owner cannot conduct additional grading nor can they add new impervious surface to improve accessibility to the existing dwellings. The Applicant testified the need for additional grading and new impervious surface on the Subject Property to add parking and improve accessibility to accommodate aging family members and future retirement.
  - b. The hardship results from conditions that are peculiar to the property because of the topography of the site requiring substantial grading, the Non-Conforming Improved Lot nature of the Subject Property, and the existence of the three single-family dwellings on site, which were constructed between 1906 and 1930 and predate the Property Owner's ownership. Further, it is not possible to have off-street parking on the sections of North Carolina Terrace or West Virginia Terrace abutting the Subject Property due to the width of these roads.
  - c. The hardship did not result from actions taken by the Property Owner because the development on the Subject Property predates the Property Owner's ownership and the enactment of the Hillside Development Ordinance.
  - 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 Property Owner's proposed development increases accessibility for safety (fire and emergency services) and addresses existing stormwater management issues on the Subject Property.
  - e. The 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 allow the grading and impervious surface associated with the new driveway and parking spaces.
  - 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 driveway and addition onto an existing single-family dwelling which is permitted in the R-2 Zoning District

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

### **CONCLUSIONS OF LAW**

- a) This Board has jurisdiction to hear and decide applications for Variances. This application is within that jurisdiction.
- b) The Applicant's application for a Variance is complete.
- c) If completed as proposed in the application, the Property Owner's development will comply with all other requirements of the Ordinance.
- d) Unnecessary hardship would result from the strict application of the Ordinance.
- e) The hardship results from conditions that are peculiar to the property, such as location, size, or topography.
- f) The hardship did not result from actions taken by the Applicant or the Property Owner.
- g) The Variance is consistent with the spirit, purpose and intent of the Ordinance such that public safety is secured and substantial justice is achieved.
- h) The Variance approved is the minimum Variance that will make possible the requested Use of the land, Building or Structure.
- i) The Variance is not a request to permit a Use of land, Building or Structure which is not permitted in the applicable Zoning District.
- j) The application for a Variance submitted by the Applicant should be approved.

NOW, THEREFORE, IT IS ORDERED, based upon the foregoing Findings of Facts and Conclusions of Law, and by a vote of four in favor and one against of the voting Board members present at the February 22, 2024, meeting, upon a duly made motion and second, to approve the Applicant's application for a Variance to Chapter K Article IV Section II(4)(a) of the Montreat General Ordinance to increase the Approved Graded Area from 40% to 85.2% and to Chapter K Article IV Section II(4)(j) of the Montreat General Ordinance to increase the approved development intensity ratio from 0.30 to 0.472 on the Subject Property, the VARIANCE IS HEREBY GRANTED.

ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

TOWN OF MONTREAT BOARD OF ADJUSTMENT

By: \_\_\_\_\_  
Danny Sharpe, Chair

Attest:

---

Angie Murphy, Clerk to the Board

DRAFT