

**Town of Montreat**  
**Board of Adjustment (BOA)**  
**Meeting Agenda**  
**May 23, 2024, 5:00 p.m.**  
**Montreat Town Hall**  
**1210 Montreat Rd., Black Mountain, NC 28711**  
**Meeting also held via Zoom: <https://bit.ly/3oFiacy>**

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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. **ADOPTION OF APRIL 25, 2024, MEETING MINUTES** (*Packet pages PENDING*)

- **Suggested Motion:** To adopt the April 25, 2024, Meeting Minutes as drafted/amended.

V. **ORDER OF APPROVAL**

- 1) **Variance Request (VA-2024-01)** – A Variance Request (VA-2024-01) submitted by Richard Giles (Property Owner of the Subject Property) for the lot described as PIN#072007755800000 located approximately 400 feet north of the intersection of Assembly Circle and Kentucky Road to Section 501.5 of the Montreat Zoning Ordinance (MZO) to reduce the front setback requirement from 30 feet to 15 feet on the South Carolina side of the Subject Property to construct an Accessory Dwelling Unit.

**Suggested Motion:** To approve/approve with revisions/deny the written order of approval for VA-2024-01.

*Staff materials (packet pages 3 - 8)*

- 2) **Special Use Permit Request (SUP-2024-01)** – A Special Use Permit (SUP-2024-01) to allow a 468-square-foot Accessory Dwelling Unit with a final height taller than ten feet submitted by Richard Giles (Property Owner) for the lot described as PIN#072007755800000 located approximately 400 feet north of the intersection of Assembly Circle and Kentucky Road on property in the R-1 Residential Zoning District.

**Suggested Motion:** To approve/approve with revisions/deny the written order of approval for SUP-2024-01.

*Staff materials (packet pages 9-13)*

VI. **NEW BUSINESS**

VII. **ADJOURNMENT**



**STATE OF NORTH CAROLINA  
BUNCOMBE COUNTY**

**BEFORE THE TOWN OF MONTREAT  
BOARD OF ADJUSTMENT  
CASE NO. VA-2024-01**

**In the Matter of: The Variance request submitted by Richard Giles (Property Owner of the Subject Property) for the lot described as PIN# 072007755800000 located approximately 400 feet north of the intersection of Assembly Circle and Kentucky Road to Section 501.5 of the Montreat Zoning Ordinance (MZO) to reduce the front setback requirement from 30 feet to 15 feet on the South Carolina side of the Subject Property to construct an Accessory Dwelling Unit.**

**ORDER**

THIS MATTER coming on for hearing before the Town of Montreat Board of Adjustment ("Board") on consideration of the Variance Application to Section 501.5 of the Montreat Zoning Ordinance to reduce the front setback requirement from 30 feet to 15 feet on the South Carolina side of the Subject Property to construct an Accessory Dwelling Unit submitted by William "Richard" Giles, Jr. ("Property Owner" with Sally Richardson Giles) on property located at 426 Kentucky Road for the lot described in the deed recorded in Book 5589 at Page 431, Buncombe County Registry, assigned Buncombe County Tax PIN# 072007755800000 approximately 400 feet north of the intersection of Assembly Circle and Kentucky Road ("Subject Property") within the Town of Montreat ("Town") pursuant to Section 310.5 of the Montreat Zoning Ordinance ("Ordinance") adopted June 10, 2021.

A quasi-judicial evidentiary hearing before the Board was held April 25, 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, 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 310.5 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 Applicant and Sally Richardson Giles, obtained via the deed recorded in the Buncombe County Register of Deeds at Book 5589 at Page 431 dated and recorded on September 12, 2017.
- 5) The Subject Property is zoned R-1 and contains an existing single-family dwelling.
- 6) Section 501.5 of the Ordinance requires a 30-foot setback from the property line for structures on properties within the R-1 Zoning District. It is noted that there are two Section 501.5s in the Ordinance. This Variance application refers to the second of the two regarding Minimum Front Yard.
- 7) On or about March 27, 2024, in accordance with Section 310.5 of the Ordinance, the Applicant submitted an application for a Variance to Section 501.5 of the Ordinance to reduce the required front yard setback on the South Carolina

Terrace side of the Subject Property from 30 feet to 15 feet to construct an Accessory Dwelling Unit. Based on a review of the documents presented, the Town Zoning Administrator, Kayla DiCristina, AICP, ("DiCristina") determined the application to be complete.

- 8) The public hearing was properly noticed in accordance with all applicable laws and regulations governing the noticing requirements for public hearings. DiCristina and the Applicant presented evidence at the public hearing and were properly sworn-in.
- 9) The staff report with exhibits, staff presentation, and Special Use Permit application were submitted into evidence at the public hearing.
- 10) The Applicant presented sworn testimony that the volume of water received on the Subject Property and the damage it has historically caused to the existing dwelling. The stormwater is currently managed by an existing swale that diverts water away from the existing dwelling. The Applicant stated the location of the swale necessitates the need for the Variance and that no disturbance to the existing stormwater management system is proposed with this application. When asked by Board Member Neel if it was possible to reduce the deck size to reduce the Variance requested, the Applicant testified that reducing the deck size and locating the footprint of the Accessory Dwelling Unit westward towards the interior of the property would generate disturbance of the existing functioning stormwater management system.
- 11) Competent, material, and substantial evidence was presented by the Applicant to the Board to show the following requirements were met:
  - a. Unnecessary hardship would result from the strict application of the Ordinance because the Subject Property receives a substantial amount of stormwater compared to surrounding properties which, along with existing topographical challenges, reduces the building envelope for the proposed Accessory Dwelling Unit.
  - b. The hardship results from conditions that are peculiar to the property because of the volume of stormwater received by the Subject Property and the existing topography of the Subject Property.
  - c. The hardship did not result from actions taken by the Applicant because the proposed Accessory Dwelling Unit has not been constructed and the stormwater management issue and lot subdivision pre-date the Applicant's ownership.
  - 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 volume of stormwater received by the Subject Property creates a safety hazard and the Applicant's actions post-development will improve the safety of the existing dwelling and proposed Accessory Dwelling Unit, as well as provide additional stormwater management for the surrounding properties.

- e. The Variance is the minimum Variance that will make possible the requested Use of the land, Building or Structure. The Accessory Dwelling Unit cannot be relocated to comply with the Ordinance, nor can the Variance requested by reduced because the stormwater and topography dictate the location of the proposed Accessory Dwelling Unit. Relocating the Accessory Dwelling Unit westward on the Subject Property would impact the existing functional stormwater management system.
- 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 reduce a setback. The Applicant applied for a Special Use Permit for the requested use concurrently with this application.

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 Applicants' 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 Applicants or the property owners.
- 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 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 5 in favor and 0 against of the voting Board members present at the April 25, 2024, meeting, upon a duly made motion and second, to approve the Applicant's application for a Variance to Section 501.5 of the Montreat Zoning Ordinance to reduce the front setback requirement from 30 feet to 15 feet on the South Carolina side of the Subject Property to construct an Accessory Dwelling Unit on the Subject Property, the VARIANCE IS HEREBY GRANTED.

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

TOWN OF MONTREAT BOARD OF ADJUSTMENT

By: \_\_\_\_\_  
\_\_\_\_\_, Chair

Attest:

\_\_\_\_\_  
Angie Murphy, Clerk to the Board





**STATE OF NORTH CAROLINA  
BUNCOMBE COUNTY**

**BEFORE THE TOWN OF MONTREAT  
BOARD OF ADJUSTMENT  
CASE NO. SUP-2024-01**

**In the Matter of: The Special Use Permit to allow a 468-square-foot Accessory Dwelling Unit with a final height taller than ten feet submitted by Richard Giles (Property Owner) for the lot described as PIN#072007755800000 located approximately 400 feet north of the intersection of Assembly Circle and Kentucky Road on property in the R-1 Residential Zoning District.**

**ORDER**

THIS MATTER coming on for hearing before the Town of Montreat Board of Adjustment (“Board”) on consideration of the Special Use Permit Application to allow an Accessory Dwelling Unit with a final height taller than 10 feet in the R-1 Zoning District as required by the Montreat Zoning Ordinance Article V Table of Permitted Uses and Section 606.13, respectively, submitted by William “Richard” Giles, Jr. (“Property Owner” with Sally Richardson Giles) on property located at 426 Kentucky Road for the lot described in the deed recorded in Book 5589 at Page 431, Buncombe County Registry, assigned Buncombe County Tax PIN# 072007755800000 approximately 400 feet north of the intersection of Assembly Circle and Kentucky Road (“Subject Property”) within the Town of Montreat (“Town”) pursuant to Section 310.6 of the Montreat Zoning Ordinance (“Ordinance”) adopted June 10, 2021.

A quasi-judicial evidentiary hearing before the Board was held April 25, 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, 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 310.6 of the Ordinance, and pursuant to N.C. Gen. Stat. §160D-406, on the Special Use Permit application submitted by the Applicant, and the matter is properly before the Board, is within the Board’s jurisdiction under the Ordinance, and is ripe for consideration.

- 3) Section 310.6 of the Ordinance provides that in approving a Special Use Permit, the Board of Adjustment must find:
  - a) That the Use will not be detrimental to or endanger the public health, safety or general welfare if located where proposed and developed according to the plan as submitted and approved.
  - b) That the Use meets or will meet all the required and applicable development standards and conditions of the Town of Montreat.
  - c) That the Use will not substantially diminish and impair the value of any property any portion of which is located within two hundred fifty feet (250') of the boundary of the parcel on which the Use will be located.
  - d) That the location and character of the Use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and will not be injurious to the use and enjoyment of other property, for the purposes already permitted, within the area in which it is located.
  - e) That the location and character of the Use, if developed according to the plan as submitted and approved, will be in general conformity with the adopted policies and plans, including the Comprehensive Plan of the Town of Montreat.
  - f) That adequate measures have been taken or will be taken to provide ingress and egress so designed as to minimize congestion in the public streets.
  - g) The application for a Special Use Permit submitted by the Applicant should be approved.
- 4) The Subject Property is owned by the Applicant and Sally Richardson Giles, obtained via the deed recorded in the Buncombe County Register of Deeds at Book 5589 at Page 431 dated and recorded on September 12, 2017.
- 5) The Subject Property is zoned R-1 and contains an existing single-family dwelling.
- 6) The Table of Permitted Uses in Article V of the Ordinance requires a Special Use Permit for "Accessory Dwelling Units" in the R-1 Zoning District. Section 606.13 of the Ordinance also requires a Special Use Permit for Accessory Buildings exceeding ten feet (10') in height at eave line.

- 7) On or about March 27, 2024, in accordance with Section 310.6 of the Ordinance, the Applicant submitted an application for a Special Use Permit for an Accessory Dwelling Unit exceeding ten feet in height at eave line to be constructed on the Subject Property. Based on a review of the documents presented, the Town Zoning Administrator, Kayla DiCristina, AICP, ("DiCristina") determined the application to be complete.
- 8) The public hearing was properly noticed in accordance with all applicable laws and regulations governing the noticing requirements for public hearings. DiCristina and the Applicant presented evidence at the public hearing and were properly sworn-in.
- 9) The staff report with exhibits, staff presentation, and Special Use Permit application were submitted into evidence at the public hearing.
- 10) The Applicant did not present sworn testimony, but made themselves available for questions.
- 11) Competent, material and substantial evidence was presented by the Applicant to the Board to show the following requirements were met:
  - a) The proposed Use will not materially endanger the public health, safety, or general welfare if developed according to the submitted application because the proposed Accessory Dwelling Unit will be constructed in compliance with all Ordinances of the Town of Montreat and stormwater will be appropriately managed on the Subject Property.
  - b) The proposed Use meets and will meet all required and applicable development standards and conditions of the Town as demonstrated by the Zoning Administrator's staff report. The staff report showed the proposed Accessory Dwelling Unit met the applicable development standards and conditions except for Section 501.5 of the Ordinance. The Board of Adjustment approved a Variance to Section 501.5 of the Ordinance for a reduction in the front yard setback from South Carolina Terrace from 30 feet to 15 feet on April 25, 2024, before hearing SUP-2024-01.
  - c) The proposed Use will not substantially diminish or impair the value of any property any portion of which is located within two hundred fifty feet (250') of the boundary of the Subject Property because owners of property within 250 feet of the Subject Property were notified and no testimony or evidence was received to indicate that any diminishment or impairment of property values would occur as a result of this development. Further, the aesthetics of the

proposed Accessory Dwelling Unit will complement the existing surrounding properties and stormwater will be appropriately managed on the Subject Property.

- d) The proposed Use, if developed according to the application and site plan submitted, will be in harmony with the area and will not injure the existing use and enjoyment of other property in the area because the aesthetics of the proposed Accessory Dwelling Unit will complement the existing surrounding properties. Additionally, the height of the proposed Accessory Dwelling Unit is less than the height of the existing dwelling on the Subject Property thereby minimizing its visual impact.
- e) The proposed Use, if developed according to the application and site plan submitted, will be in general conformity with the Comprehensive Plan of the Town and other adopted policies and plans because the proposed aesthetics of the proposed Accessory Dwelling Unit will complement the existing surrounding properties and the Applicant is addressing stormwater management, which generally support the Development Vision Statement in *Montreat Tomorrow*.
- f) The Subject Property has existing parking on site adjacent to Kentucky Road that is sufficient to meet the needs and requirements of the proposed Accessory Dwelling Unit and no vehicular access is proposed from South Carolina Terrace so congestion in the surrounding public streets is minimized.

Therefore, based upon the foregoing FINDINGS OF FACT, and Section 310.6 of the Ordinance, the Board hereby makes the following:

#### **CONCLUSIONS OF LAW**

- a) This Board has jurisdiction to hear and decide applications for Special Use Permits for “Accessory Dwelling Units exceeding ten feet (10’) in height at eave line” (See Section 606.13) in the R-1 Zoning District (See Article V Table of Permitted Uses)” in the R-2 Zoning District. This application is within that jurisdiction.
- b) The Applicant’s application for a Special Use Permit is complete.
- c) That the Use will not be detrimental to or endanger the public health, safety or general welfare if located where proposed and developed according to the plan as submitted and approved.

- d) That the Use meets or will meet all the required and applicable development standards and conditions of the Town of Montreat.
- e) That the Use will not substantially diminish and impair the value of any property any portion of which is located within two hundred fifty feet (250') of the boundary of the parcel on which the Use will be located.
- f) That the location and character of the Use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and will not be injurious to the use and enjoyment of other property, for the purposes already permitted, within the area in which it is located.
- g) That the location and character of the Use, if developed according to the plan as submitted and approved, will be in general conformity with the adopted policies and plans, including the Comprehensive Plan of the Town of Montreat.
- h) That adequate measures have been taken or will be taken to provide ingress and egress so designed as to minimize congestion in the public streets.
- i) The application for a Special Use Permit 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 5 in favor and 0 against of the voting Board members present at the April 25, 2024, meeting, upon a duly made motion and second, to approve the Applicant's application for a Special Use Permit to allow a detached Garage (Accessory Building) in the front yard of the Subject Property, the SPECIAL USE PERMIT IS HEREBY GRANTED.

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

TOWN OF MONTREAT BOARD OF ADJUSTMENT

By: \_\_\_\_\_  
\_\_\_\_\_, Chair

Attest:

\_\_\_\_\_  
Angie Murphy, Clerk to the Board