

**Town of Montreat  
Planning & Zoning Commission (P&Z)  
Meeting Agenda  
October 23, 2025, 10:30 a.m.  
Montreat Town Hall  
1210 Montreat Road, Black Mountain, NC 28711**

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- I. CALL TO ORDER**
  - Welcome
  - Moment of Silence
  
- II. ADOPTION OF AGENDA**
  - **Suggested Motion:** To adopt the meeting agenda as presented/amended
  
- III. ADOPTION OF JULY 17, 2025, MEETING MINUTES *(pages xx -xx)***
  - **Suggested Motion:** To adopt the July 17, 2025, Meeting Minutes as drafted/amended.
  
- IV. OLD BUSINESS**
  
- V. NEW BUSINESS**
  - **CONDITIONAL ZONING REQUEST & PUBLIC HEARING**
  
  - **ZONING ADMINISTRATOR UPDATES & DISCUSSION**
  
- VI. NEXT MEETING**
  - January 15, 2026, at 10:30 am
  
- VII. PUBLIC COMMENT**
  
- VIII. ADJOURNMENT**

Board members:

Julie Schell, Chair  
Clay Hamilton  
Sally Jenkins  
Gayle Sawyer  
Allen Crawford – ETJ Representative

Board members absent: Bill Tucker

Eleanor James  
Mike Broussard  
Daniel Hewitt, Alternate Member

Town staff present: Rich Caplan, Interim Zoning Administrator

Angie Murphy, Town Clerk  
Brandon Freeman, Town Attorney

There were three members of the public present. Chair Julie Schell called the meeting to order at 10:33 a.m. and led the group in a moment of silence after a brief welcome.

**Agenda Approval**

Clay Hamilton moved to adopt the meeting agenda as presented. Sally Jenkins seconded, and the motion carried 5/0.

**Adoption of April 17, 2025, Meeting Minutes**

Chair Schell advised Town Clerk Angie Murphy of a few minor capitalization changes under “new business”. Clay Hamilton moved to adopt the April 17, 2025, Meeting Minutes as amended. Sally Jenkins seconded, and the motion carried 5/0.

**Oath of Office**

Ms. Murphy administered the Oath of Office to Alternate Member Gayle Sawyer and to Regular Member Sally Jenkins.

**Old Business**

Chair Schell expressed her thanks to Interim Zoning Administrator Rich Caplan for joining the Montreat team. Mr. Kaplan looks forward to moving forward with progress.

Subcommittee Updates:

- Hillside Development Subcommittee consists of Chair Julie Schell, Secretary Eleanor James, Allen Crawford, and Sally Jenkins. Meeting date was set for September 11, 2025, at 9:30 a.m. with an alternate meeting date of September 10, 2025, at 9:30 a.m.
- Montreat Sign Ordinance Subcommittee consists of Gayle Sawyer, Julie Schell, and Clay Hamilton. Meeting date was set for August 6, 2025, at 10:30 a.m. They will review the previously recommended edits.
- Zoning Ordinance Amendments Research Subcommittee consists of Julie Schell, Allen Crawford, Clay Hamilton, Eleanor James, and Mason Blake as Board of Commissioners Representative. Ms. Schell asked for an email to be sent to all members of the subcommittee about a proposed meeting in the first week of August. The suggested meeting date was August 6<sup>th</sup> at 9:00 a.m. An alternate date of August 5<sup>th</sup> at 9:00 a.m. was also planned. Interim Zoning Administrator Caplan suggested reviewing the floodplain ordinance and possibly creating a sediment control ordinance as a part of this subcommittee.

**New Business**

Mr. Kaplan advised that a Special Meeting could potentially need to be scheduled regarding a map amendment. Mr. Burns would like the map amendment reviewed in a timely manner. Mr. Kaplan expressed the importance of making sure all procedures are followed correctly due to litigation on previous procedural items.

Mr. Kaplan suggested that new P&Z Commission members read the Montreat Tomorrow Comprehensive Plan.

Mr. Kaplan also suggested that the Hillside Development Subcommittee and the Zoning Ordinance Amendment Research Subcommittee bring changes to the scheduled October meeting. Ms. Schell advised that she felt comfortable with the Sign Ordinance Subcommittee presenting their report in October but was hesitant to commit to Hillside Development at this time. She also felt it was unrealistic for the Zoning Ordinance Amendments Research Subcommittee to present in October. Clay Hamilton suggested at the next meetings for each subcommittee to list their priorities aiming for October.

Mr. Kaplan briefly touched on the Wade Burns matter by saying that permits were issued to Mr. Burns and the house was constructed but the neighboring property owner has challenged him legally in court. Attorney Brandon Freeman advised that the courts had made a decision, but he is unsure when this matter will come back before the appropriate Montreat Board. Mr. Freeman reminded the Commission to treat any case that comes before the Board with the same legislative

eye as any other case brought before them.

Mr. Kaplan advised that Duke Energy will soon be relocating power poles between the street and the MRA. He also advised that Montreat College's McAllister Gym sustained a lot of damage from Hurricane Helene. The previous zoning administrator had placed numerous conditions on the issuance of zoning permits. Mr. Kaplan went on to say that there are problems between the college and their insurance company as well as the contractor keeping costs within budget.

Clay Hamilton suggested the addition of an educational aspect to the floodplain ordinance. Sally Jenkins suggested asking for input from other municipalities. Mr. Hamilton made mention of the Town of Black Mountain reviewing Flat Creek. Ms. Jenkins mentioned a potential legislative bill which could limit what municipalities could do in the floodplain. Allen Crawford stated that the Board needed to consider what aspects of the floodplain were not followed. Ms. Schell stated that reminders about permits are needed prior to starting projects.

### **Public Comment**

Wade Burns of 779 Foreman Siding Road in the ETJ began a lengthy synopsis of his current legal situation with regards to his home. Attorney Brandon Freeman reminded him that he only had three minutes to speak, and he was past his time limit. Mr. Burns asked Chair Schell for more time to speak. Ms. Schell allowed for an additional five minutes. Mr. Burns then explained the purpose of Conditional Uses. He was reminded by Chair Schell not to get into details of his application. Mr. Burns advised that a neighborhood meeting was held the previous Saturday which is a requirement of the application process for Conditional Zoning. He also advised that an application was filed with the Town of Montreat on July 16<sup>th</sup>. Mr. Burns stated that the matter will first come before the Planning & Zoning Commission for conditional zoning and then before the Board of Commissioners for their decision. Ms. Schell advised that his time was up.

### **Next Meeting**

October 16, 2025, at 10:30 a.m.

### **Adjournment**

Sally Jenkins moved to adjourn the meeting. Clay Hamilton seconded, and the meeting was adjourned at 11:30 a.m.

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Julie Schell, Chair

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Angie Murphy, Town Clerk





# Staff Report – Conditional Zoning for 779 Foreman Siding Rd

**Proposed Project:** Property owners, Wade and Susie Burns, have submitted an application for a Conditional Zoning District requesting a conditional rezoning for 779 Foreman Siding Road (PIN 072111773600000) from R-3 to R-3 CZ to accommodate a single-family residential structure.

Created by:

Alexis Baker, AICP  
Interim Zoning Administrator  
Town of Montreat

Created for:

Montreat Planning & Zoning Commission  
October 23, 2025

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1. Map Amendment Application
2. Site Plan
3. Reason for Request
4. Conditions
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7. Memorandum of James and Kristina Hamilton

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## STAFF REPORT – Conditional Zoning, 779 Foreman Siding Road

### Summary

The following report summarizes the Zoning Administrator’s review of an application for Conditional Zoning by Wade and Susie Burns (property owners) at property described as 779 Foreman Siding Rod (PIN#: 072111773600000) The property contains a two-story single-family residence:

**Parcel Identifier Number (PIN #):** 072111773600000

**Address:** 779 Foreman Siding Road

**Owner:** BURNS WADE, BURNS SUSIE  
PO BOX 610, MONTREAT, NC, 28757

**Applicant:** Wade Burns (property owner)

**Zoning:** R-3 Low-Density Residential, ETJ

**Current Land Use:** Single-Family Residential

**Utilities:** Existing onsite (public water/private sewer)

**Acres:** 0.26 acres (11,326 SF lot)

NOTE: R-3 Low-Density Residential district minimum lot size for Single-Family Dwellings is 20,000 SF, however, this is a Lot of Record and therefore only subject to dimensional standards (i.e. setbacks, etc.)

### Public Notice

Applicant mailed Public Notice to properties within 250’ of the site at least 14 days in advance of the **7/12/2025 Community Meeting** (see Figure 1: 250' Public Notice for Conditional Zoning, PIN # 072111773600000, 779 Foreman Siding Rd.)

Town staff mailed Public Notice to properties within 250’ of the site on **October 13, 2025** (10 days ahead of **10/23/25 Planning & Zoning Commission hearing**)

Montreat’s Town Clerk will provide Public Notice at least one week ahead of the **10/23/25 Planning & Zoning Commission hearing**, posting notice via:

- The Town’s website
- The Town’s “Montreat Minute” e-mail newsletter
- Posted notice on a community bulletin board at the Montreat Post Office
- Posted notice on the Town’s Hall’s community bulletin board

Montreat Planning & Zoning Commission, Public Hearing: **10/23/25**

Public Notice cont.

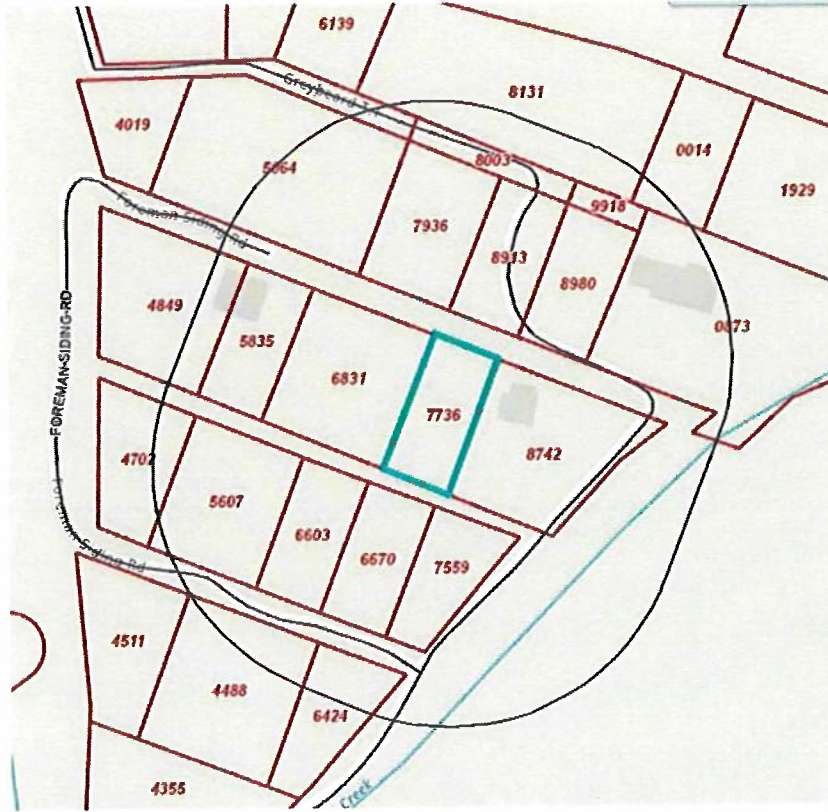


Figure 1: 250' Public Notice for Conditional Zoning, PIN # 072111773600000, 779 Foreman Siding Rd.

### Conditional Zoning Request

Property owners, Wade and Susie Burns, have submitted an application for a Conditional Zoning District requesting a conditional rezoning for 779 Foreman Siding Road (PIN 072111773600000) from R-3 to R-3 CZ to accommodate a single-family residential structure.

See **STAFF ANALYSIS** (i.e. Alexis Baker, AICP, Interim Montreat Zoning Administrator) in addition to applicant-provided materials. **STAFF ANALYSIS** contain references to the Montreat Zoning Ordinance (MZO, eg. Sec. 500) and Montreat General Ordinances (MGO) where noted.

## Conditional Zoning

### Uses

#### STAFF ANALYSIS

“Single Family Dwelling” is a Permitted Use (Sec. 500 Permitted Uses Table) allowed within the R-3 Low-Density Residential zoning district, subject to Administrative review and approval. Any request for a use involving Conditional Zoning (CZ) requires review and an advisory vote by the Montreat Planning & Zoning Commission (advisory body), followed by review and a binding vote by the Montreat Board of Commissioners (legislative body).

### Setbacks and Lot Size

#### STAFF ANALYSIS

**Lot area:** 0.26 acres (11,326 SF lot)

R-3 Low-Density Residential minimum lot area for Single-Family Dwellings is 20,000 SF (Sec. 503.41).

However, this is a Lot of Record and thus legally allowed to be developed at its current size of 11,326 SF.

This is an existing lot with a single-family residence.

**Lot width:** 75.09' (front), 75.61 (rear), **75.35 average**

R-3 Low-Density Residential minimum lot width is 75' (Sec. 503.5).

**Lot depth:** 150.39' (east side), 149.85' (west side), **150.12 average**

R-3 Low-Density Residential minimum lot depth is 100' (Sec. 503.6).

#### **Setbacks (note: this is a “double front” lot)**

- Required front setback in this district is 30'
  - Applicants' Site Plan calls for a 19.2' setback to the north on Foreman Siding Rd.
  - Applicants' Site Plan appears to call for a 75' (approx.) setback to the south on Gilchrist Court.
- Required side setbacks in this district is 15' for Single-Family and Two-Family Dwelling Units (Sec. 503.81).
  - Applicants' Site Plan calls for a 13' side setback to the east side.

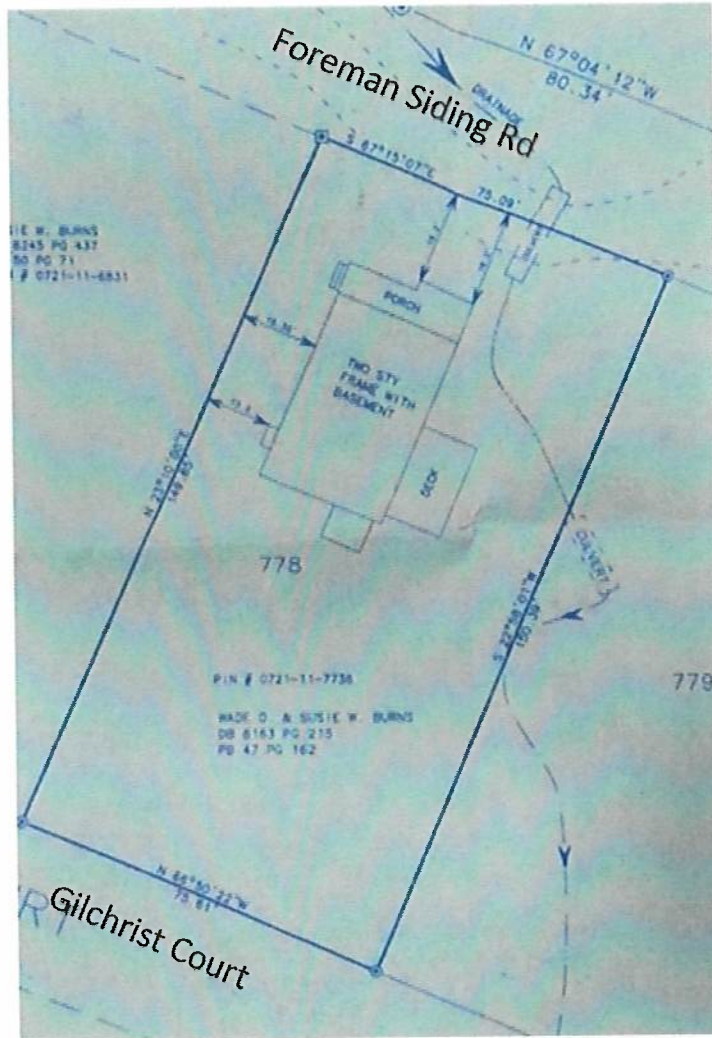


Figure 2: Site Plan

Background

**STAFF ANALYSIS**

Property owners, Wade and Susie Burns, have submitted an application for a Conditional Zoning District requesting a conditional rezoning for 779 Foreman Siding Road (PIN 072111773600000) from R-3 to R-3 CZ to accommodate a single-family residential structure.

Landscaping and Trees

**STAFF ANALYSIS**

The applicant did not propose removing any trees within a Town of Montreat right-of-way (MRA right-of-way is the subject site's frontage and access), therefore **Montreat's Tree Ordinance does not apply** to this site. (Montreat General Ordinances, Chapter K – ENVIRONMENT, ARTICLE V: TREES).

## Erosion & Sediment Control (ESC)

### STAFF ANALYSIS

Erosion & Sediment Control (ESC) is the technical term for “stormwater control during construction”. The applicant’s exhibit “Erosion Control, page 3” notes the following conditions, all per **Buncombe County Soil Erosion and Sedimentation Control Ordinance** design standards:

- **Silt fences** in areas of soil disturbance.
- **Entry and exit** from grading area will be separated from “clean” areas with gravel “mud mat” where needed.
- There are **no paved roads lower than the flow areas of land to be disturbed**.

The Town of Montreat does not have its own independent ESC standards, but rather, references Buncombe County’s standards as follows:

### **MONTREAT CODE OF GENERAL ORDINANCES**

#### **CHAPTER K – ENVIRONMENT**

#### **ARTICLE II: SOIL EROSION AND SEDIMENTATION CONTROL ORDINANCE**

(Refers to the most updated version of the “Buncombe County Soil Erosion and Sedimentation Control Ordinance.”)

Projects that disturb more than one (1) acre of land are subject to Buncombe County ESC review and permitting. This project **did not disturb more than one (1) acre** and therefore is not subject to Buncombe County ESC review.

### Post-Construction Stormwater Control

### STAFF ANALYSIS

Post-Construction Stormwater Control is the technical term for “stormwater control after construction is complete”. The applicant should be required to adhere to all relevant Post-Construction Stormwater Control requirements.

### Hillside and Floodplain Development

### STAFF ANALYSIS

The Town of Montreat’s Hillside Development and Floodplain Development ordinances are not applicable to this site since neither steep slopes (>40% slope) nor floodplains exist on the site.

### Comprehensive Plan

### STAFF ANALYSIS

The Subject Property is located in Montreat’s ETJ. According to page 22 of **Montreat Tomorrow: Town of Montreat Comprehensive Plan (2023)**:

*Within the town boundaries, the majority of developable land has already been developed. Changes in future land use would likely require redevelopment of existing parcels. Most of the land in the Extraterritorial Jurisdiction (ETJ) is included in either the Woodland District (WL) or the Ridge Protection Overlay (RPO) and is also protected from further development. However there are some properties under private ownership in the ETJ that could be developed. Development of these properties brings up concerns about the impact on the environment and municipal services such as roads and stormwater management, as residents of the EJT are part of Buncombe County's tax base and not Montreat's tax base.*

#### Conditions

Per Section 510.56 of the MZO, "if an application for conditional zoning is approved, thereafter the development and Use of the property shall be government by the standards, restrictions and regulations provided for in the corresponding zoning District, together with such changes, standards and conditions imposed by the Town Board of Commissioners." Furthermore, per Section 160D-703 of the North Carolina General Statutes, "specific conditions may be proposed by the petitioner or the local government or its agencies, but only those conditions approved by the local government and consented to by the petitioner in writing may be incorporated into the zoning regulations." See attachments for Applicant's proposed conditions.

# ATTACHMENT 1



# MAP AMENDMENT APPLICATION

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

**REQUIRED FEE: \$200.00 (CASH OR CHECK)**

## INSTRUCTIONS

All applications for amendments to the Town of Montreat's Zoning Map 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: WADE D. BURNS TELEPHONE: 828-231-0650  
MAILING ADDRESS: P.O. BOX 610 CITY: MONTREAT STATE: NC ZIP: 28757  
LOCAL ADDRESS: 779 FOREMAN SIDING ROAD CITY: MONTREAT STATE: NC ZIP: 28757  
EMAIL: WDBMONTREAT@GMAIL.COM

## PROPERTY INFORMATION

PLEASE NOTE: A RECORDED SURVEY MAP, DEED, OR OFFER TO PURCHASE MAY BE REQUIRED AT THE ZONING ADMINISTRATOR'S DISCRETION.

ADDRESS: 779 FOREMAN SIDING ROAD CITY: MONTREAT STATE: N.C. ZIP: 28757  
PIN#: \_\_\_\_\_ TOTAL ACREAGE: .74 FLOODPLAIN: YES  NO   
PROPERTY OWNER: WADE & SUSIE BURNS TELEPHONE: 828-231-0650  
MAILING ADDRESS: P.O. BOX 610 MONTREAT, NC 28757  
CURRENT ZONING: R-1 R-2  R-3 I I/R WL OTHER: \_\_\_\_\_ OVERLAY ZONING: RPO TCO CD N/A  
REQUESTED ZONING: R-1 R-2 R-3 I I/R WL OTHER: \_\_\_\_\_ OVERLAY ZONING: RPO TCO CD N/A  
STATE THE REASON FOR THE REQUEST (ATTACH SHEETS AS NECESSARY): \_\_\_\_\_

CONDITIONAL ZONING APPLICATION WAS SUBMITTED JULY 16, 2025 TO  
REINSTATE VACATED PERMITS SO THAT WE CAN CONTINUE TO LIVE IN OUR  
HOME OF NEARLY TWO YEARS AND W/ RIGHTS TO RETIRE THERE. SEE OUR HOME  
OR BORROW MORTGAGE ON OUR HOME  
CONDITIONAL ZONING REQUESTS DOCUMENTS

For Conditional Zoning Requests, the applicant is required to hold a community meeting in accordance with Section 510.4 of the Montreat Zoning Ordinance.

DATE OF COMMUNITY MEETING: JULY 12, 2025 AT 779 FOREMAN SIDING ROAD 2:00 PM

**CONDITIONAL ZONING APPLICATIONS MUST INCLUDE THE FOLLOWING DOCUMENTS:**

1. A site plan drawing (to scale) showing:
  - a. The total acreage, present zoning classifications and Uses for the subject property and adjacent properties, date, and north arrow.
  - b. All existing Easements, reservations, and rights-of way.
  - c. Areas within the regulatory floodplain as shown on official Flood Hazard Boundary Maps for the Town of Montreat including delineation of streams and associated stream Buffers.
  - d. All proposed uses of land and structures, including all required and requested setbacks. For residential uses this includes the number of units and an outline of area where the Structure will be located. For nonresidential uses, this includes the approximate square footage of all structures and an outline of the area where the structures will be located.
2. If applicable, a written report of the community meeting including a listing of those persons and organizations contacted about the meeting and the manner and date of contact, the time, date, and location of the meeting, and a description of any changes to the rezoning application made by the applicant as a result of the meeting.

**SIGNATURES AND ACKNOWLEDGEMENT**

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

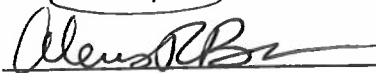
  
Signature of Applicant

7/30/25  
Date

WADE D. BURNS  
Printed Name of Applicant

**OFFICE USE ONLY**

Complete      Incomplete



Zoning Administrator Signature

9/23/25  
Date

Alexis Baker

Printed Name of Zoning Administrator

Fee: 200 —      PAID 7/17/25      Paid:  Yes      No

Payment Method: check

Scheduled Planning and Zoning Commission Meeting Date: 10/23/25

Scheduled Board of Commissioner Meeting Date: \_\_\_\_\_

## ATTACHMENT 2

- LEGEND
- UNIMPROVED POINT
  - ⊙ NO. 5 REBAR SET
  - ⊕ REBAR FOUND
  - ⊙ POWER POLE
  - ⊙ IRON PIPE (12" DIA)
  - ⊙ CONCRETE PILE

GILCHRIST COURT

FOREMAN SIDING



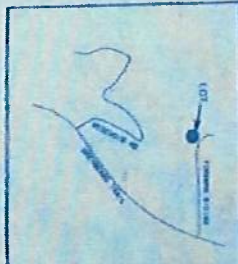
WADE D. & SUSIE W. BURNS  
 DB 6163 PG 162  
 PIN # 0721-11-4813

JAMES A. HIGHTSHAM, JR.  
 DB 6316 PG 162  
 PIN # 0721-11-4813

WADE D. & SUSIE W. BURNS  
 DB 6243 PG 157  
 PIN # 0721-11-4813

MONTANA NETWORK ASSOC.  
 DB 3003 PG 158  
 PIN # 0721-11-4813

BORGES INVESTMENTS, LLC  
 DB 6360 PG 162  
 PIN # 0721-11-4813



- NOTES:
1. THIS IS AN EXISTING LOT IN MONTANA.
  2. SUBJECT PROPERTY SET ON 6163 PG 162 PIN # 0721-11-4813.
  3. THIS PROPERTY IS SUBJECT TO ANY EASEMENTS OR RIGHTS OF WAY OF RECORD THAT MAY BE FOUND IN A FULL TITLE EXAMINE.
  5. HEIGHTS CALCULATED BY THE COORDINATE METHOD.

SIGNATURE: *[Signature]*



WADE D. & SUSIE W. BURNS  
 SURVEY FOR  
 BLACK MTL, TWP.  
 SUNCORP CO., NC.



ERTLON SURVEYING, INC. 732 OLD US 79 GANNON, NC  
 PHONE (828) 686-0878 FAX (828) 686-8175

G-824

## ATTACHMENT 3

July 16, 2025

## REASON FOR THE REQUEST

The Burns believe that the evidence of the Burns design, engineering and the 16 or so special conditions the Burns included in the execution of their construction not only protected the Hamilton property and Flat Creek but provide proof that Mr. Hamilton's arguments are invalid.

The Burns believe, all the details, construction and engineering will demonstrate that the Burns home as constructed was exactly the best and proper way to meet not only storm water concerns but the purpose and intent of Montreat's zoning and General ordinances. It was, in fact the Special engineering and placement of the home that proved to prevent what otherwise would have resulted in damage.

The Hamilton's argued to the Town of Montreat, and the BOA and to Buncombe County Superior Court, that the Burns home would do environmental harm to their property and to Flat Creek.

Hamilton's attorney argued in Court, Sept. 2023, that the suit was about Storm Water. The attorney repeated the same claim is September 2024, (a few weeks before Hurricane Heleen).

However, in court on May 2, 2025, Hamilton's attorney repeated these arguments that the suit was about environmental harm to his property and to Flat Creek. Mr. Hamilton has never visited his home after Heleen to see that his claims were wrong.



Wade D. Burns

## ATTACHMENT 4

### Principal Stormwater Management elements: (Conditions)

1. A steel reinforced concrete vault, 26' wide x 40' long x 9' 8" high was installed adjacent to the west side of the stream bed. This concrete "box" is backfilled on it's west side to create a berm sloping to the west.
2. The "box" is lined with large boulders to create a storm wall as the west bank of the open stream on the Burns lot.
3. The east bank of the open stream on the Burns lot is lined with boulders topped with stone curbing to create another storm wall.
4. A parallel concrete plus stone curbing 12' east of the stream bank with curbing that create the borders for the drive and keep water flow from the Burns lot getting on to the neighbor's new garden area.
5. Two stone boulder walls from the west and south corner of the "box" continue the backfilled berm protection of the "box". The continuous west side berm safely redirected SW away from the Burns open stream bed and into a large natural forest area.
6. Two 1,500 gallon cisterns collect 3,000 gallons of rainfall from the roof for slow release.

These 6 SW management elements were critical in the successful treatment of Heleen's SW and might be considered the 6 conditions important in the building of the Burns home.

ATTACHMENT 5

July 16, 2025

COMMUNITY MEETING: As required by Town of Montreat, Section 510

CONDITIONAL ZONING DISTRICT

510.41 Community Meeting.

A Community Meeting was held on July 12, 2025 at 779 Foreman Siding Road.

Written notice to property owners within 250' of 779 Foreman Siding Road was mailed from the Montreat Post Office 14 days in advance of that meeting. The list of those invited and owning property within 250' of 779 Foreman Siding Road as provided by Zoning Administrator, Kayla DeCristina is attached.

The meeting was hosted by T.C. Morphis, Attorney on Zoom. A copy can be made available.

Wade Burns was attending in person as was Rev. Elizabeth Deibert and her husband Dr. Richard Deibert. The Deibert's are neighbors but not within 250' of the Burns home.

Jim Hamilton and his wife Kristina, Wade Burns, as well as David Duncon and his wife Rev. Mary Kathleen Duncan attended by Zoom.

Wade Burns explained the purpose of the meeting and that it is in preparation for Wade and Susie Burns to submit a Conditional Zoning District application to the Town of Montreat for the permits and approvals required to build our home as it was constructed and approved for occupancy in August 2023.

While the Burns had received all permits required to build the Burns home, The Hamilton's filed 2 law suits against the Town of Montreat challenging these approvals.

Superior Court Judge Marvin Pope ruled that the permits be vacated and referred back to the Town of Montreat BOA.

Mr. Hamilton, declared in the Community Meeting on July 12, 2025 that he will oppose the Burns Application for Conditional Zoning.

While the Burns have filed an appeal to the Judge's rulings the Appellant Court (as evidenced by the MRA Appeal regarding the MRA Lodge/Hotel) may be 3 or more years for a decision.

Accordingly, the Burns are filing for the Conditional Zoning Permit, where, if approved, might resolve the issues and allow the Burns to have legal residence is their home.

Wade D. Burns

Wade DuBose Burns and wife Susie Watson Burns

PO Box 610

779 Foreman Siding Road

Montreat, N.C. 28757

June 26, 2025

To: Our neighbors owning property within 250 feet of our new home in Montreat's ETJ (Extra Territorial Jurisdiction) Montreat:

This letter is to invite you to a community meeting on Saturday, July 12, 2025, 2:00 PM at our home at 779 Foreman Siding Road.

This meeting is a requirement and precursor to an application my wife and I will file with the Town of Montreat in July for a Conditional Zoning Permit to replace our building permits overturned in Superior Court on June 17, 2025 citing errors in the Town's approval of our permits to build in 2022.

Susie and I built our new home and moved in August, 2023.

Jim and Kristina Hamilton, filed law suits against the Town of Montreat and us, contesting Town approvals to build our home.

On June 17, 2025, Buncombe County Superior Court Judge Marvin Pope signed an order that all contested matters go back to the Town of Montreat vacating the permits that allowed us to build our home.

Susie and I believe a Conditional Zoning Approval from the Town of Montreat is the best way to resolve the issues.

Mr. Hamilton, an attorney, argued from 2022 thru May 2025 that building our house adjacent to a dry (ephemeral) streambed would environmentally harm his property and Montreat's Flat Creek.

But our home and site were engineered and built with well researched Stormwater control measures that have been successful. Jim and Kristina Hamilton have not been back to their home in

June 26, 2025 continued

Montreat to see how well these measures have performed since the summer of 2023.

In September of 2024, Hurricane Helene came thru our properties with historic force and the engineered control measures we implemented worked as planned and prevented the environmental harm the Hamilton's assured the Court would occur.

We look forward to seeing you in person or by zoom if you can't be here in person.

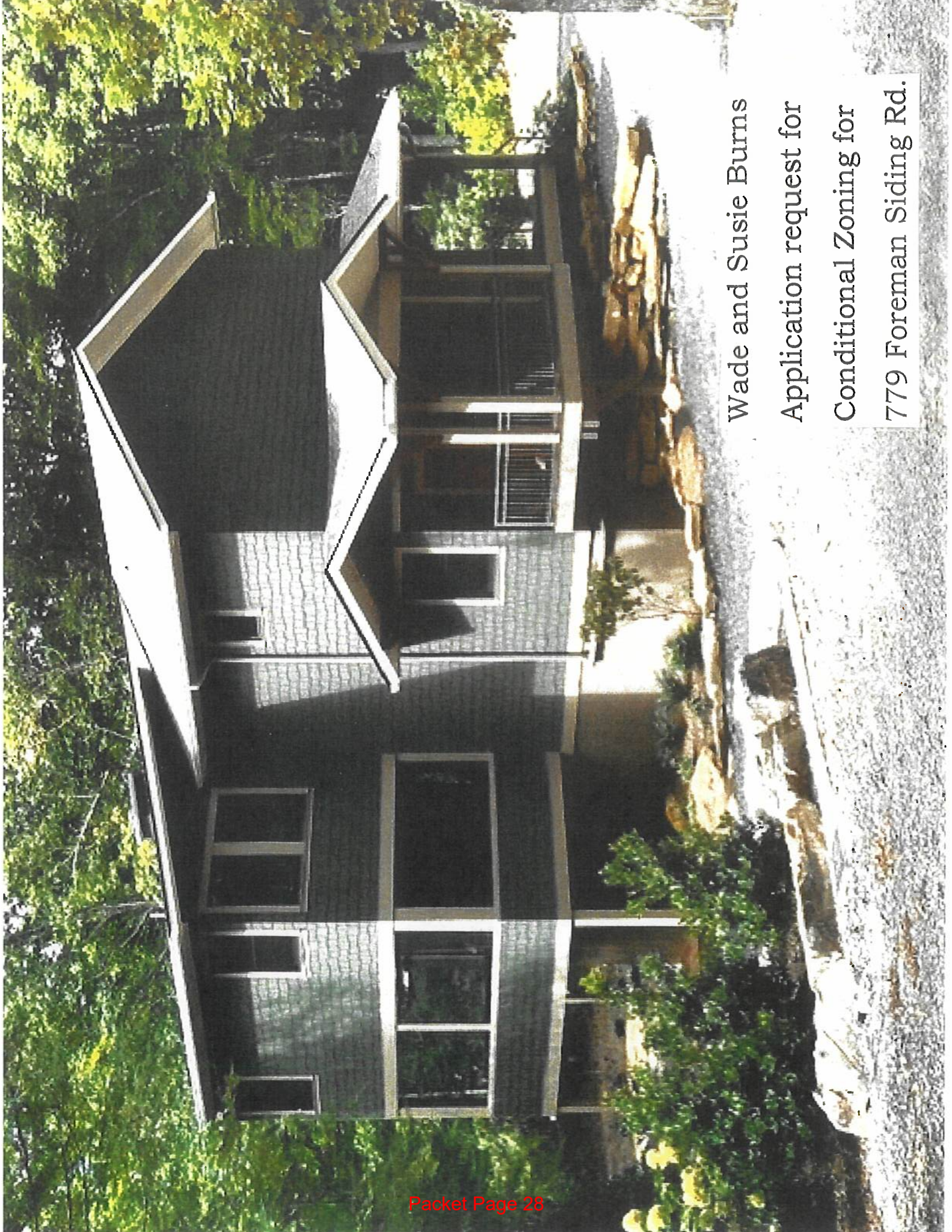
RSVP as you can.

A handwritten signature in blue ink, appearing to read 'Wade DuBose Burns', is positioned above the contact information.

Wade DuBose Burns cell 828 231 0650

wdbmountainliving@gmail.com

## ATTACHMENT 6



Wade and Susie Burns  
Application request for  
Conditional Zoning for  
779 Foreman Siding Rd.

**Conditional Zoning District** Application 779 Foreman Siding Road

The Burns new home was permitted and constructed, as permitted, and has been the Burns full time home beginning in August 2023.

Jim and Kristina Hamilton filed suits against the Town and the Burns opposing the building of the Burns Cottage. Their principal claim was that the Burns home would cause harm to their property.

The Town advised the Court they would not participate in the Trial.

The Court has ordered the BOA approval of 2 setback variances and the BOA's decision not to impose a 30' setback from the ephemeral stream be remanded back to the Montreat Town BOA for a do over.

The Burns have filed this application for a Conditional Zoning District approval, of the ¼ acre lot and completed home. All of the questions of what might be and what might happen if the Burns home was constructed are now easily assessed by seeing the actual finished home with all of the conditions and concerns of the suing next door neighbor and any concerns of the Town having been addressed by the Burns in the homes careful planning, engineering and finished construction.

The neighbors' arguments to the Court were that the Burns home would cause environmental harm to the neighbors' property.

In fact, the Burns took such care that Hurricane Heleen blew thru and flooded thru the Burns ¼ acre lot by their home, with no harm to the neighbor's home or property as a result of the Burns home and its' location next to the stream bed.

It is the damage that could have been done had the Burns not so successfully engineered and reinforced the stream bed that avoided washout, that managed the storm water path from the west, and north and captured 3,000 gallons in cisterns for slow release downstream. The extensive planning, design and construction of their home and site performed as planned and was tested by Heleen.

Section 510 **Conditional Zoning District.** A Montreat Ordinance

510.1. **Purpose.** CZD's are primarily intended to allow for the zoning and development of property in accordance with zoning District standards with additional and/**or modified standards** that enable the use and development of the subject property in a manner which is better suited to the topography and other unique characteristics of the site and which is also consistent with the character of the Use and development of the neighboring properties.

Lot 779 is a one quarter acre lot platted over 100 years ago. The Town of Montreat has zoned the lot as R-3 Residential District. The Burns cottage is a modest single family residence.

**Modified standards** are necessary for the reasonable development of this single family residence on the one quarter acre Burns lot.

The Burns lot is in the ETJ, R-3, which has no public sewer but has the same building setbacks as R-1 and R-2 Residential Districts which all have public sewer.

The Buncombe County Dept. of Health sets the location and setbacks for septic approvals. Buncombe County engineered the Burns septic system resulting in the Town 30' rear yard setback being increased to an 80' setback.

The NC DENR identified the stream bed crossing the northeast corner of the Burns lot as an ephemeral stream (a normally dry stream bed) that must allow for such storm water as may be generated by a major storm to pass thru the property. This increased the east side yard setback from 15' to between 22' and 34'. The Burns designed their home to meet the 22' to 34' east side yard setback requiring only a 2' reduction of the west side yard setback to allow for the chimney to encroach 2' into the west side yard setback. The Burns designed their home to only need a reduction in the front yard setback from 22' 6" to 19' to allow their front porch to encroach 3' 6" into the 22' 6" front yard setback.

The Hamilton law suit against the Burns argued that the Town BOA should have imposed a 30' building setback from the stream bed crossing the Burns lot. Mr. Hamilton argued that the NC DENR "mid level" official's determination that the stream bed is ephemeral, (not requiring a 30' stream building setback) was not right and that the BOA should have imposed such a setback. This has also been referred back to the Town for redress.

Attached to this application is a copy of the NC DENR letter certification of the Burns stream bed is ephemeral.

If the Town determines that a 30' building setback from an ephemeral stream bed exists, or that the Montreat BOA should have imposed such a setback and the Town affirms that such a ruling is to be their ruling in response to this Conditional Zoning District request, it would require the demolition of the entire home.

**510.2. Uses within the District.** Within a Conditional Zoning District, only those Uses listed as permitted Uses in the corresponding zoning District shall be permitted. Individual conditions and site specific standards are limited to those needed to bring a project into compliance with town ordinances and adopted plans.

The applicant shall propose development standards to mitigate the impacts reasonably expected to be generated, especially with regard to property adjacent to the Conditional Zoning District. Special Uses shall require a Special Use Permit as required for the applicable zoning District.

The Burns Cottage is a single family residential structure allowed in R-3 Low Density Residential District and therefore does not require a Special Use Permit and is exempt from lot size standards as having been platted before the Town was created.

Facts warranting **Conditional Zoning District** approval

Wade Burns designed and built the Burns cottage. Mr. Burns has 61 years of formal design education (Virginia Tech College of Architecture and Urban Studies) and practical experience as a licensed architect since 1973 specializing in Town/City planning and as a licensed general contractor beginning in Atlanta in 1974 and again in this century in Montreat.

The home and property were designed to not only prevent harm to the Hamilton home or Flat Creek but to protect them in case of an historical environmental event. Hurricane Heleen hit 1 year later.

Here is what we engineered and constructed that performed as intended in Hurricane Heleen. These SW management steps protected the Hamilton property and Flat Creek from harm.

North and northwest of the Burns lot, there are 70 acres of hillside, subject to rain saturation. When saturated, this water flows down and into the stream entering the Burns stream bed. There is a natural swale west and slightly northwest of the Burns lot channeling sheet water eastward toward the open stream bed. The major northern storm water flow is in the stream as it reaches the Burns lot. Another northern water flow comes from the north and slightly east down onto R/W above the Burns and Hamilton lots.

To manage major stormwater impact, all of the water flowing toward the Burns lot was addressed with extensive engineering and mitigation to manage, slow, redirect flow and protect the Burns, Hamilton and neighbors' properties below.

We identified forces and risks. The points of potential failure were; Too much volume for traditional rain gardens, Weak stream bank sections, Vulnerable culvert conditions and capacity of the open stream bed between the two preexisting culverts carrying stormwater thru the Burns lot.

We addressed all of these risks.

To reduce the volume of SW entering the open section of the stream bed on our lot and reduce the risk of washout, we did the following:

1. The house was built on a steel reinforced 9' 8" tall concrete foundation at the western edge of a dry ephemeral stream bed that managed Heleen's waters keeping sheet water flow from reaching the Hamilton's lot. The 26' x 40' x 9' tall foundation was designed as a storm water barrier. Backfilling earth against the west side concrete wall created an 8' high berm upstream of the Burns open streambed.
2. From the southwestern corner of the 9' 8" tall house concrete foundation, 2 large boulder retaining walls kept flowing sheet water from reaching the stream bed and Hamilton's lot until it flowed harmlessly thru heavily wooded areas below our respective lots and across our rear (south) yard without even washing away the landscape tree bark mulch.
3. Above and to the north and west of our house foundation and the 2 boulder retaining walls, we created a depressed gentle swale that successfully intercepted and channeled Heleen's sheet water protecting the Hamilton property and Flat Creek.
4. The ephemeral stream bed passing north of and into the R/W Above our home was reinforced with more large boulders to protect the stream bed failing or washing out before it reached the 4' diameter culvert that carries storm water into the stream bed on our lot. Some Heleen water flowed over the reinforced boulder bank of the stream but the structural integrity of the stream bank remained undisturbed by Heleen.
5. Our Front Porch extends 6' to 8' across the north face of our concrete foundation. The heavy treated piers supporting our front porch are secured to and supported by large concrete foundations with as much as 5 yards of concrete per pier. There was no movement of this foundation by Heleen.
6. The northeast corner of this porch was protected with a terracing boulder wall plus very large 5' to 6' boulders lining

the western bank of the stream bed protecting and preventing a damaging washout of the west side of the Stream bed on our lot.

7. The southern end of the 4' diameter culvert carrying Heleen's water onto our property was reinforced with additional boulder wall construction which prevented a washout of the 4' culvert and our drive above the culvert was preserved.
8. The eastern side of the open streambed on our property was reinforced with large boulders preventing a washout of the stream bank.
9. To further reinforce the eastern stream bank, we constructed a 10" wide by 2' deep concrete curb at the eastern edge of our driveway which also helped reinforce the east streambed bank to prevent a wash out.
10. The 4' diameter culvert carrying Heleen water into the 26' of open streambed on our lot only had a 3' diameter culvert carrying water from our property on to Hamilton's lot. Both culverts were existing before Burns or Hamiltons owned our lots. To address the reduction of flow thru the 3' diameter culvert, we added a 16" diameter culvert to reduce the disparity. We then constructed a 1' x 5' concrete bulkhead around the 3' culvert with boulders reinforcing each side and formed in the bulkhead a level concrete weir to control water flow and to prevent washout in the event of overflow. This allowed any overflow to follow a natural path across our driveway and back into the streambed.
11. In the open stream bed on our lot, even with all the measures we put in place to insure there was no washout in the event of a major storm, there was a risk if the beautiful mature white oak was felled by hurricane level wind which could tear up the east streambed wall possibly resulting in damage to downstream property. As a necessary precaution, we had that tree carefully removed a few months before Heleen

arrived. That tree could have crushed our new home or the Hamilton home.

12. Stormwater flowing onto our property from the north could wash debris onto the Hamilton lot where they had recently installed large trees and shrubs as a privacy screen. To protect the Hamilton property from stormwater flow onto their new landscaped screening area, we reversed the slope of our existing drive from flowing toward the Hamilton lot to flowing toward our side. We also installed a 10" wide concrete curb to better protect the Hamilton lot from stormwater flow into their new landscaped area.
13. The Hamilton lot was getting stormwater from northern lots that the Burns do not own. John Burris built a 16" to 2' high stone wall north of the Hamilton lot which reduced the sheet water flow from the Burris lot. Burns designed and constructed a 15' wide x 1' cast iron grate and catch basin to intercept stormwater north of the Hamilton lot preventing sheet water flow onto the Hamilton lot. Harriet Riley and Boheme investment approved and reimbursed the Burns for the cost of the catch basin. Harriet also approved and paid for installing a large mud matt (Railroad ballast stone) which is designed to filter silt from flowing into the 15' wide catch basin.
14. The Burns constructed an additional 10" wide by 2' deep concrete curb and a 2' x 2' concrete catch basin at the north western corner of the Hamilton lot to also catch stormwater from flowing onto the Hamilton's new garden screening area. The Burns installed a 6" pipe to carry that water from both catch basins safely under the Burns driveway until it can be safely discharged into the existing ephemeral streambed.
15. Hamilton's Asheville attorney falsely told Judge Pope in the September 2024 hearing that rainwater coming from the roof of the Burns home was a contributor to the Hamilton claim of environmental harm resulting from the Burns home

built at the edge of the ephemeral streambed. In Truth, the rainwater landing on the Burns roof goes into roof gutters, that then go into down spout gutters that then go into 4" PVC piping that carry the 1<sup>st</sup> 3,000 gallons of rainwater into underground storage tanks buried in the west side berm of the Burns home.

16. The 3,000 gallon stormwater retention system described in no. 15 above actually met all the Town's Stormwater management requirements and the requirements of our Stormwater permit.

Conditional Zoning approval is an option the Town has to approve a specific project with required conditions as deemed appropriate to meet the intent and purpose of the Town of Montreat General and Zoning ordinances.

The Town Board of Commissioners and the Planning and Zoning Commission will have all the evidence from a finished home and site and the 16 special conditions implemented in the development of the Burns property (and how well all we engineered performed in Helene) such that approving a conditional Zoning permit will be within the intent and purpose of Montreat's ordinances.

510.3 **Conditions** 510.31, 510.32, and 510.33 state that conditions may be required as part of approval.

510.34 and 510.35 requirements have been provided as a part of the application.

510.36, We, the applicant will provide additional information as may be requested by the P&Z Commission and/or the Town Board of Commissioners.

510.37, More restrictive requirements the Town Board of Commissioners deemed necessary to ensure that the purposes and intent of this ordinance are met are unknown until their review.

510.4, 510.41 and 510.42 were completed with the application.

510.5 **Scope of Approval** Any conditions approved in association with a Conditional Zoning District and so authorized shall be perpetually binding unless subsequently changed or amended as provided for in this Article.

As the unique circumstances of this application are that the entire project has been completed and upon having received a Certificate of Occupancy 2 years ago, and that the Burns have been living in their completed home for 2 years, and that there has been a demonstration by the tests of Hurricane 1 year ago, that there may not be any conditions requiring recording with the Register of Deeds other than that the Board of Commissioners have satisfied themselves that the completed and time tested finished construction of the Burns home and site meets the zoning intent and purposes of a single family residence in the **R-3 (CZ) Low Density Residential District**.

TENNIS

ROY COOPER  
Governor

JOHN NICHOLSON  
Interim Secretary

S. DANIEL SMITH  
Director



NORTH CAROLINA  
Environmental Quality

*SENT VIA ELECTRONIC MAIL ONLY: NO HARD COPY WILL BE MAILED*

June 28, 2021

Wade Burns  
[wdbmountainliving@gmail.com](mailto:wdbmountainliving@gmail.com)

Subject: Stream Identification Request  
99999 Foreman Siding Road  
Buncombe County

Dear Mr. Burns:

This letter provides the findings of a site visit to Buncombe County Parcel Identification Number 0721-11-7736-00000 at 99999 Foreman Siding Road, Montreat, North Carolina, conducted on June 25, 2021, to provide a stream determination. The stream feature is shown on the most recent published NRCS Soil Survey of Buncombe County, North Carolina, and/or the most recent copy of the USGS Topographic map at 1:24,000 scale (see attached figure). The results of the stream determination are as follows:

Features	Score	Comments
Geomorphology	9.5	
Hydrology	2.0	
Biology	4.0	
Total	15.5	
<b>Determination:</b>	<b><u>Ephemeral Stream Determination</u></b>	

This on-site determination shall expire five (5) years from the date of this letter. Landowners or affected parties that dispute a determination made by the Division of Water Resources (DWR) may request a determination by the Director. An appeal request must be made within sixty (60) days of date of this letter. A request for a determination by the Director shall be referred to the Director in writing. If sending via US Postal Service: c/o Paul Wojoski; DWR – 401 & Buffer Permitting Unit; 1617 Mail Service Center; Raleigh, NC 27699-1617. If sending via delivery service (UPS, FedEx, etc.): Paul Wojoski; DWR – 401 & Buffer Permitting Unit; 512 N. Salisbury Street; Raleigh, NC 27604.

This determination is final and binding unless, as detailed above, an appeal is requested within sixty (60) days.



North Carolina Department of Environmental Quality | Division of Water Resources  
Asheville Regional Office | 2090 U.S. Highway 70 | Swannanoa, North Carolina 28778  
828.296.4500

If you have questions regarding this determination, please feel free to contact me at 828-296-4684 or [Andrew.W.Moore@ncdenr.gov](mailto:Andrew.W.Moore@ncdenr.gov).

Sincerely,

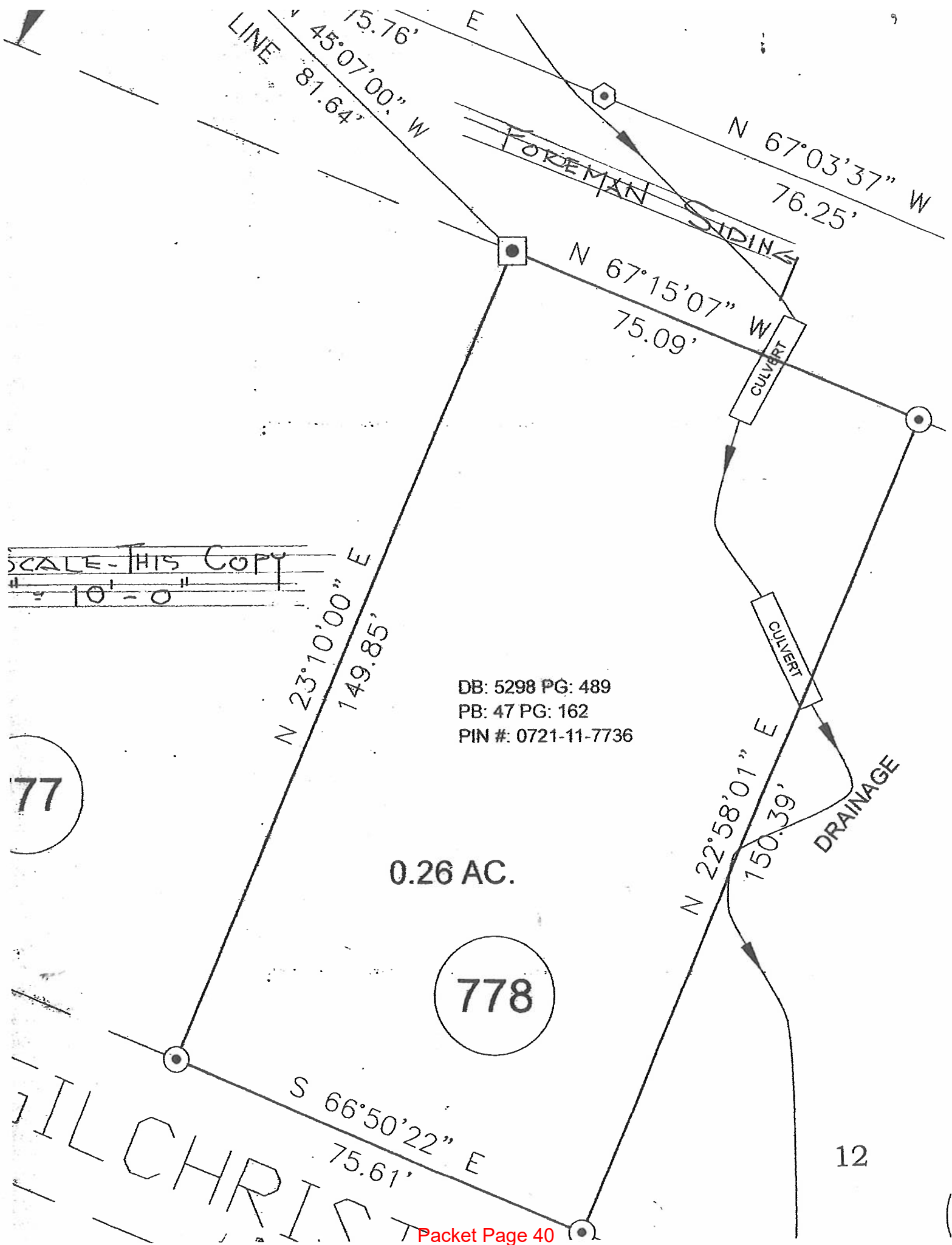
DocuSigned by:  
*Andrew Moore*  
5C147F587AE9400...

Andrew Moore  
Asheville Regional Office  
Water Quality Regional Operation Section  
NCDEQ – Division of Water Resources

Enclosures: Maps

cc: Scott Adams, Town of Montreat





15.76'  
 N 45°07'00" W  
 LINE 81.64'

N 67°03'37" W  
 76.25'

FOREMAN SIDING

N 67°15'07" W  
 75.09'

CULVERT

SCALE - THIS COPY  
 1" = 10' - 0"

N 23°10'00" E  
 149.85'

DB: 5298 PG: 489  
 PB: 47 PG: 162  
 PIN #: 0721-11-7736

77

0.26 AC.

778

N 22°58'01" E  
 150.39'

CULVERT

DRAINAGE

S 66°50'22" E  
 75.61'

12

MILCHRIST

**AUTHORIZATION FOR WASTEWATER SYSTEM CONSTRUCTION ///WELL CONSTRUCTION**  
BUNCOMBE COUNTY ENVIRONMENTAL HEALTH 30 VALLEY STREET, ASHEVILLE, NC 28801 828-250-5016 (fax: 250-6161)

CODES: S-4, S-8

**\* REPAIR EXEMPT \*** Lot lines must not change.

Property Owner: Parkes C. Dibble & Wade D. Burns Property Location: Foreman Siding Rd. Montreat, NC 28757 Application Date: 08/24/2021 AC  
06/09/2021 IP  
Directions: Montreat Rd. north from Black Mtn. thru rock archway, bear straight onto Greybeard Tr. where rd. turns hard rt., to end + TL, 100' to lot on left  
Subdivision: Montreat Retreat Phase section: \_\_\_\_\_ Lot# 778

Well Design:  New  Repair  Abandonment  
Water Supply:  Private Well  Spring  Shared Well  Public/Community  
Existing Wells:  Yes  No

System Design:  New System  Repair  Revision Multiple Unit Dwelling: # of Units \_\_\_\_\_ # Bedrooms per unit \_\_\_\_\_ Max. # of occupants per unit \_\_\_\_\_

Residential:  House  Mobile Home ( single  double) Bedrooms 3 Max. # of occupants 6 Basement:  Yes  No Basement Plumbing:  Yes  No

Commercial/Other: (Describe) \_\_\_\_\_

Design Specifications Total Design Flow: 360 (GPD) LTAR: 0.6 Soil Group: II-III Pump System Required:  Yes  No

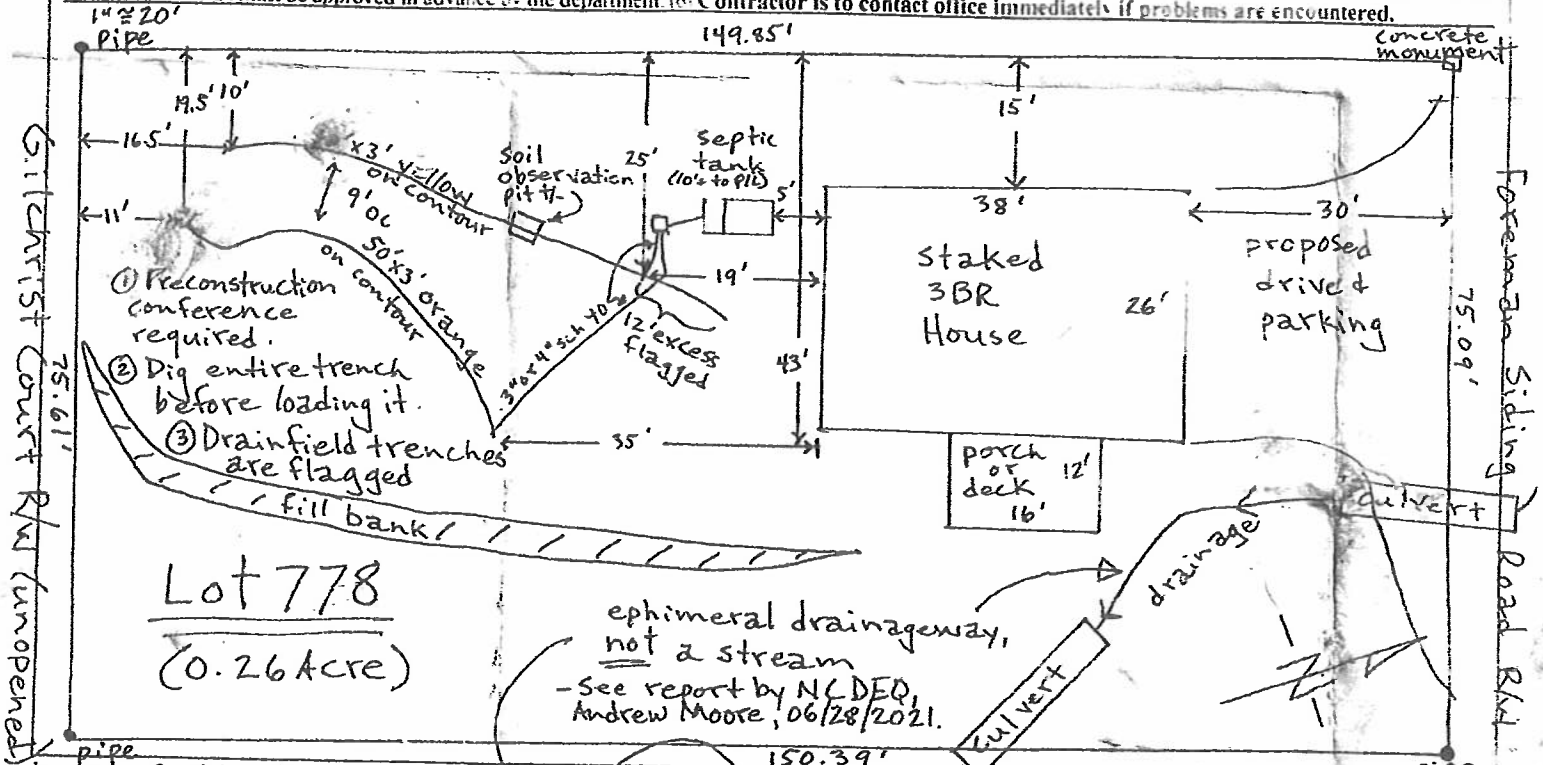
Trenches: Length: 100 ft No. of Trenches 2 Width: 36 in Spacing: 9 ft Depth: 20 in (lower sidewall) Stone Depth: \_\_\_\_\_ in

Distribution:  Equal Gravity  Pressure Manifold  Serial  Dams Step Downs Tank Size: Septic 1000 Pump Tank \_\_\_\_\_

Minimum Separation Distance to Well (includes system and repair area): 50 ft System Classification: Tile (PPBPS - horizontal)

System Type:  Prefabricated Panel Block  Conventional  Large Diameter Pipe  Chamber  Expanded Polystyrene Aggregate  Other \_\_\_\_\_

Conditions: (1) No grading, filling or other site disturbance in the indicated septic area. (2) Install drainfield on contour of land. (3) Divert gutters and other surface water away from septic system. (4) System is to be installed in accordance with the conditions of this permit and NC sewage rules. (5) Modifications to the indicated design must be approved in advance by the department. (6) Contractor is to contact office immediately if problems are encountered.

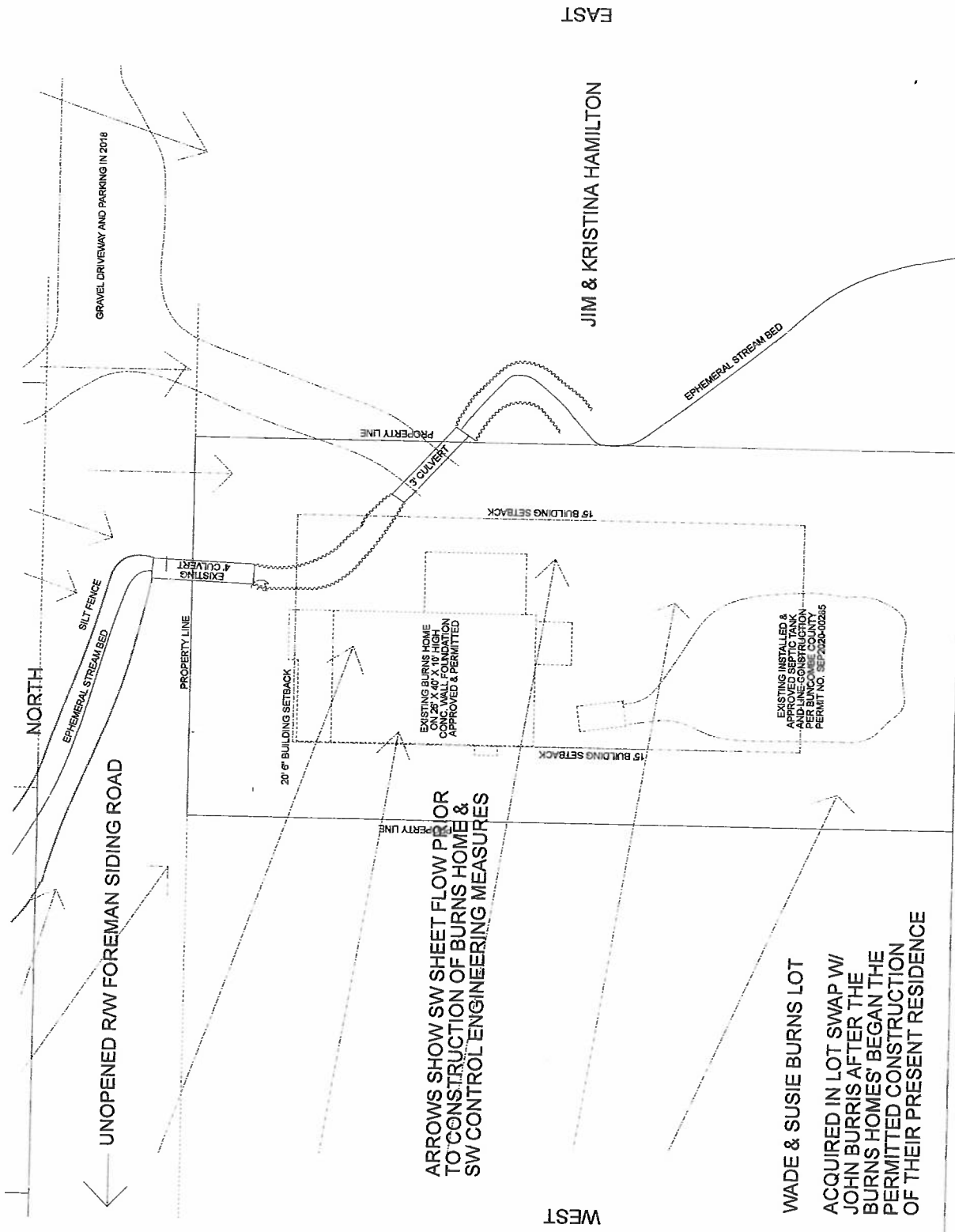


Improvement Permit Date of Issuance: \_\_\_\_\_  This document shall be considered issuance of an Improvement Permit with all required information.

This document authorizes the property owner to construct a horizontal type PPBPS Tile ground Absorption Sewage Disposal System. The owner MAY CONSIDER installing other types of accepted systems listed above. Changes or modifications from the indicated design may result in revocation of the Authorization to Construct. The installer of this system must have a copy of this document on site during all phases of the installation and final inspection.

Issued By: Stewart Blair Date: 09/22/2021 Owner/Agent: emailed Date: 09/22/2021

\*THE VALIDITY FOR THIS CONSTRUCTION AUTHORIZATION IS FOR 5 YEARS FROM THE DATE OF ISSUANCE. IF AN IMPROVEMENT PERMIT WAS PREVIOUSLY ISSUED ON A DIFFERENT DATE, THEN VALIDITY OF THE CONSTRUCTION AUTHORIZATION IS EQUAL TO 5 YEARS FROM THE DATE OF ISSUANCE OF THE IMPROVEMENT PERMIT.\*



NORTH

EAST

JIM & KRISTINA HAMILTON

WEST

SOUTH

GRAVEL DRIVEWAY AND PARKING IN 2018

UNOPENED RAW FOREMAN SIDING ROAD

SILT FENCE

PROPERTY LINE

PROPERTY LINE

EPHEMERAL STREAM BED

20' BLDG SETBACK

15' BLDG SETBACK

EXISTING BURNS HOME  
CONC. WALL FOUNDATION  
APPROVED & PERMITTED

EXISTING INSTALLED &  
APPROVED SEPTIC TANK  
PER BUNGOOSE COUNTY  
PERMIT NO. SEP-2024-00245

ARROWS SHOW SW SHEET FLOW PRIOR  
TO CONSTRUCTION OF BURNS HOME &  
SW CONTROL ENGINEERING MEASURES

WADE & SUSIE BURNS LOT  
ACQUIRED IN LOT SWAP W/  
JOHN BURRIS AFTER THE  
BURNS HOMES' BEGAN THE  
PERMITTED CONSTRUCTION  
OF THEIR PRESENT RESIDENCE

779 FOREMAN SIDING LOT BEFORE CONSTRUCTION - BUT SHOWING THE  
NOW EXISTING HOME AND SEPTIC AS PERMITTED AND CONSTRUCTED





779 Foreman Siding Road – The 2023 Burns family residence.

**History and time line:**

6/28.2021 Ephemeral Stream Determination and Certification by the NC Dept. of Environmental Quality, Andrew Moore.

9/22/21 Authorization for septic system construction, Stuart Black, Buncombe County Department of Environmental Health.

3/11/22 Approval of Zoning/Development Compliance Certificate.

4/12/22 Building Permit issued. Town of Montreat

4/12/22 Building construction started.

9/21/22 Jim and Kristina Hamilton sued the Town and the Burns. (Four Counts against the Town and one against the Burns)

10/27/22 Responding to challenges to the Town, from the Hamilton's, the Montreat Board of Adjustment approved variances for the front porch in the front yard setback and approved a request to put a 2' deep chimney into the west side yard setback. The Burns continued with the building of their home.

12/22,22, The Hamilton's filled another law suit against the Town and Burns challenging the Town BOA rulings and approvals to build.

Sept., 2023, The Superior Court Judge heard a request by all parties to combine the 2 law suits into 1, which the court granted.

9/9/24, in a 2 hour long hearing, Superior Court Judge Pope instructed the 2 parties attorneys to try and reach a settlement.

9/9/24 Hamilton requested 2 poison pills killing any settlement.

Those requests are what lawyers call a poison pill, a settlement request that is contrary to both science and common logic such that no reasonable person could agree.

### Principal Stormwater Management elements: (Conditions)

1. A steel reinforced concrete vault, 26' wide x 40' long x 9' 8" high was installed adjacent to the west side of the stream bed. This concrete "box" is backfilled on it's west side to create a berm sloping to the west.
2. The "box" is lined with large boulders to create a storm wall as the west bank of the open stream on the Burns lot.
3. The east bank of the open stream on the Burns lot is lined with boulders topped with stone curbing to create another storm wall.
4. A parallel concrete plus stone curbing 12' east of the stream bank with curbing that create the borders for the drive and keep water flow from the Burns lot getting on to the neighbor's new garden area.
5. Two stone boulder walls from the west and south corner of the "box" continue the backfilled berm protection of the "box". The continuous west side berm safely redirected SW away from the Burns open stream bed and into a large natural forest area.
6. Two 1,500 gallon cisterns collect 3,000 gallons of rainfall from the roof for slow release.

These 6 SW management elements were critical in the successful treatment of Heleen's SW and might be considered the 6 conditions important in the building of the Burns home.



# MAP AMENDMENT APPLICATION

Town of Montreat Planning and Zoning  
1210 Montreat Road, Black Mountain, NC 28711 | (828) 669-8002  
**REQUIRED FEE: \$200.00 (CASH OR CHECK)**

## INSTRUCTIONS

All applications for amendments to the Town of Montreat's Zoning Map 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: WADE D. BURNS TELEPHONE: 828-231-0650  
MAILING ADDRESS: P.O. BOX 610 CITY: MONTREAT STATE: NC ZIP: 28757  
LOCAL ADDRESS: 779 FOREMAN SIDING ROAD CITY: MONTREAT STATE: NC ZIP: 28757  
EMAIL: WDB@MONTREAT.ILLUMINARE.COM

## PROPERTY INFORMATION

PLEASE NOTE: A RECORDED SURVEY MAP, DEED, OR OFFER TO PURCHASE MAY BE REQUIRED AT THE ZONING ADMINISTRATOR'S DISCRETION.

ADDRESS: 779 FOREMAN SIDING ROAD CITY: MONTREAT STATE: N.C. ZIP: 28757  
PIN#: \_\_\_\_\_ TOTAL ACREAGE: 1.74 FLOODPLAIN: YES  NO   
PROPERTY OWNER: WADE & SUSIE BURNS TELEPHONE: 828-231-0650

MAILING ADDRESS: P.O. BOX 610 MONTREAT, NC 28757  
CURRENT ZONING: R-1 R-2  R-3 I I/R WL OTHER: \_\_\_\_\_ OVERLAY ZONING: RPO TCO CD N/A  
REQUESTED ZONING: R-1 R-2 R-3 I I/R WL OTHER: \_\_\_\_\_ OVERLAY ZONING: RPO TCO CD N/A

STATE THE REASON FOR THE REQUEST (ATTACH SHEETS AS NECESSARY): \_\_\_\_\_

CONDITIONAL ZONING APPLICATION WAS SUBMITTED JULY 16, 2025 TO  
REINSTATE VACATED PERMITS SO THAT WE CAN CONTINUE TO LIVE IN OUR  
HOME OF NEARLY TWO YEARS AND W/ RIGHTS TO RETIRE THERE, SELL OUR HOME  
OR BORROW MORTGAGE ON OUR HOME  
CONDITIONAL ZONING REQUESTS DOCUMENTS

For Conditional Zoning Requests, the applicant is required to hold a community meeting in accordance with Section 510.4 of the Montreat Zoning Ordinance.

DATE OF COMMUNITY MEETING: JULY 12, 2025 AT 779 FOREMAN SIDING ROAD 7:00 PM

**CONDITIONAL ZONING APPLICATIONS MUST INCLUDE THE FOLLOWING DOCUMENTS:**

1. A site plan drawing (to scale) showing:
  - a. The total acreage, present zoning classifications and Uses for the subject property and adjacent properties, date, and north arrow.
  - b. All existing Easements, reservations, and rights-of way.
  - c. Areas within the regulatory floodplain as shown on official Flood Hazard Boundary Maps for the Town of Montreat including delineation of streams and associated stream Buffers.
  - d. All proposed uses of land and structures, including all required and requested setbacks. For residential uses this includes the number of units and an outline of area where the Structure will be located. For nonresidential uses, this includes the approximate square footage of all structures and an outline of the area where the structures will be located.
2. If applicable, a written report of the community meeting including a listing of those persons and organizations contacted about the meeting and the manner and date of contact, the time, date, and location of the meeting, and a description of any changes to the rezoning application made by the applicant as a result of the meeting.

**SIGNATURES AND ACKNOWLEDGEMENT**

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

  
\_\_\_\_\_  
*Signature of Applicant*

7/30/25  
\_\_\_\_\_  
*Date*

WADE D. BURNS  
\_\_\_\_\_  
*Printed Name of Applicant*

**OFFICE USE ONLY**

Complete

Incomplete

\_\_\_\_\_  
*Zoning Administrator Signature*

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Printed Name of Zoning Administrator*

Fee: \_\_\_\_\_

Paid: Yes No

Payment Method: \_\_\_\_\_

Scheduled Planning and Zoning Commission Meeting Date: \_\_\_\_\_

Scheduled Board of Commissioner Meeting Date: \_\_\_\_\_

Wade DuBose Burns and wife Susie Watson Burns

PO Box 610

779 Foreman Siding Road

Montreat, N.C. 28757

June 26, 2025

To: Our neighbors owning property within 250 feet of our new home in Montreat's ETJ (Extra Territorial Jurisdiction) Montreat:

This letter is to invite you to a community meeting on Saturday, July 12, 2025, 2:00 PM at our home at 779 Foreman Siding Road.

This meeting is a requirement and precursor to an application my wife and I will file with the Town of Montreat in July for a Conditional Zoning Permit to replace our building permits overturned in Superior Court on June 17, 2025 citing errors in the Town's approval of our permits to build in 2022.

Susie and I built our new home and moved in August, 2023.

Jim and Kristina Hamilton, filed law suits against the Town of Montreat and us, contesting Town approvals to build our home.

On June 17, 2025, Buncombe County Superior Court Judge Marvin Pope signed an order that all contested matters go back to the Town of Montreat vacating the permits that allowed us to build our home.

Susie and I believe a Conditional Zoning Approval from the Town of Montreat is the best way to resolve the issues.

Mr. Hamilton, an attorney, argued from 2022 thru May 2025 that building our house adjacent to a dry (ephemeral) streambed would environmentally harm his property and Montreat's Flat Creek.

But our home and site were engineered and built with well researched Stormwater control measures that have been successful. Jim and Kristina Hamilton have not been back to their home in

June 26, 2025 continued

Montreat to see how well these measures have performed since the summer of 2023.

In September of 2024, Hurricane Helene came thru our properties with historic force and the engineered control measures we implemented worked as planned and prevented the environmental harm the Hamilton's assured the Court would occur.

We look forward to seeing you in person or by zoom if you can't be here in person.

RSVP as you can.

A handwritten signature in blue ink, appearing to read "Wade DuBose Burns". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

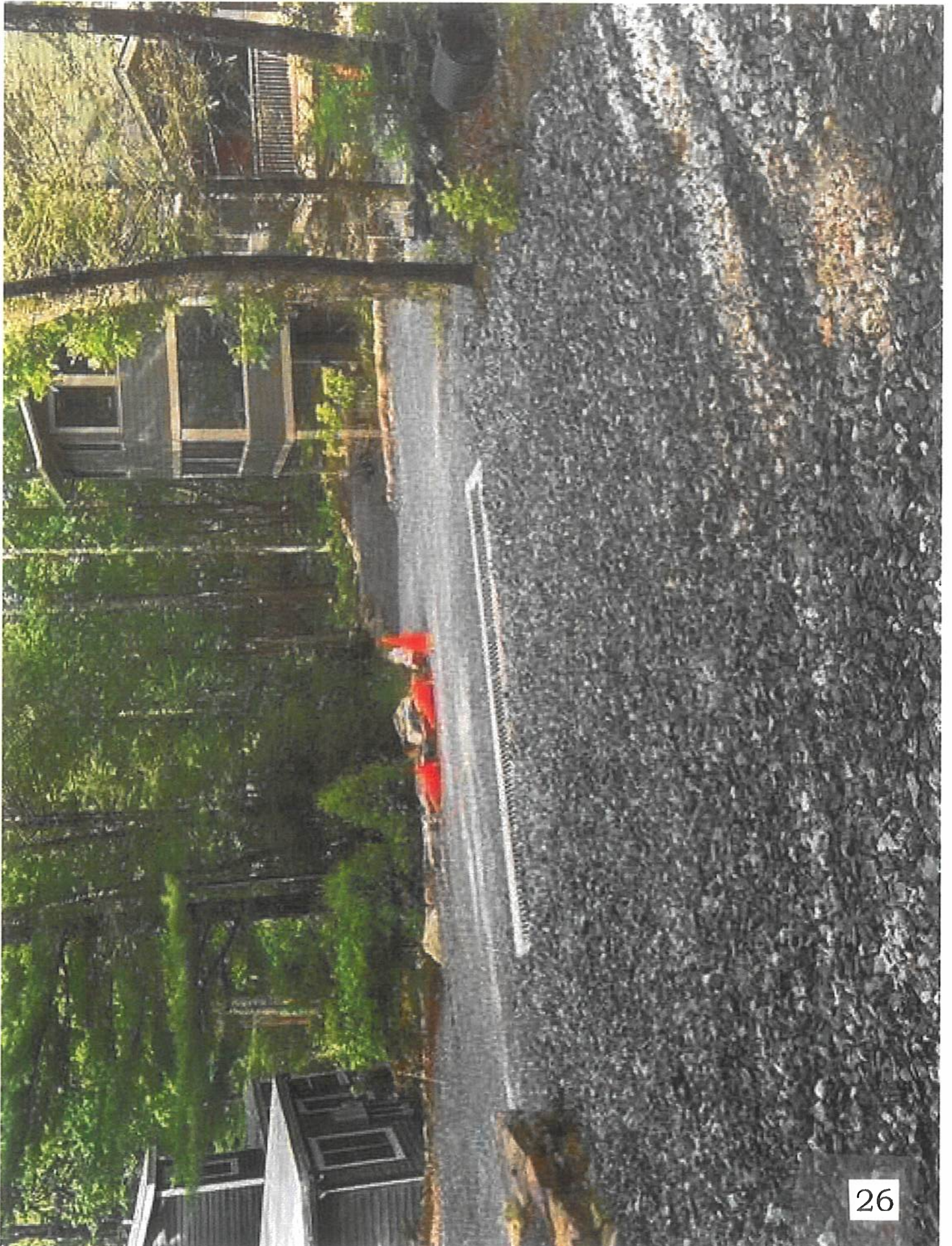
Wade DuBose Burns cell 828 231 0650

wdbmountainliving@gmail.com



24





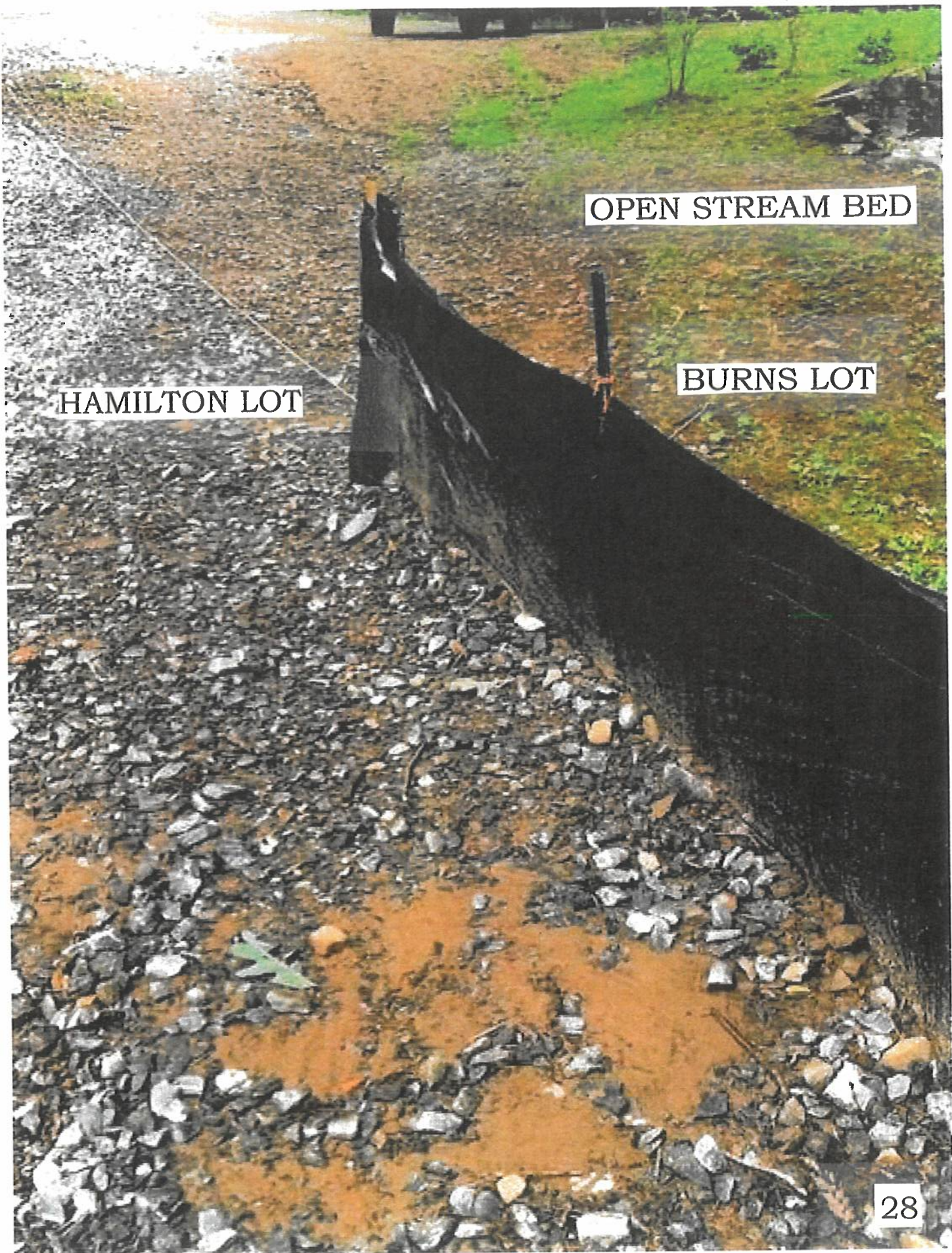
PROTECTING STREAM BED PRE CONSTRUCTION

OPEN STREAM BED

BURNS LOT  
HAMILTON LOT

NORTH, EAST AND WEST LOTS ALL FLOWING  
UNRESTRICTED INTO BURNS OPEN STEAM BED

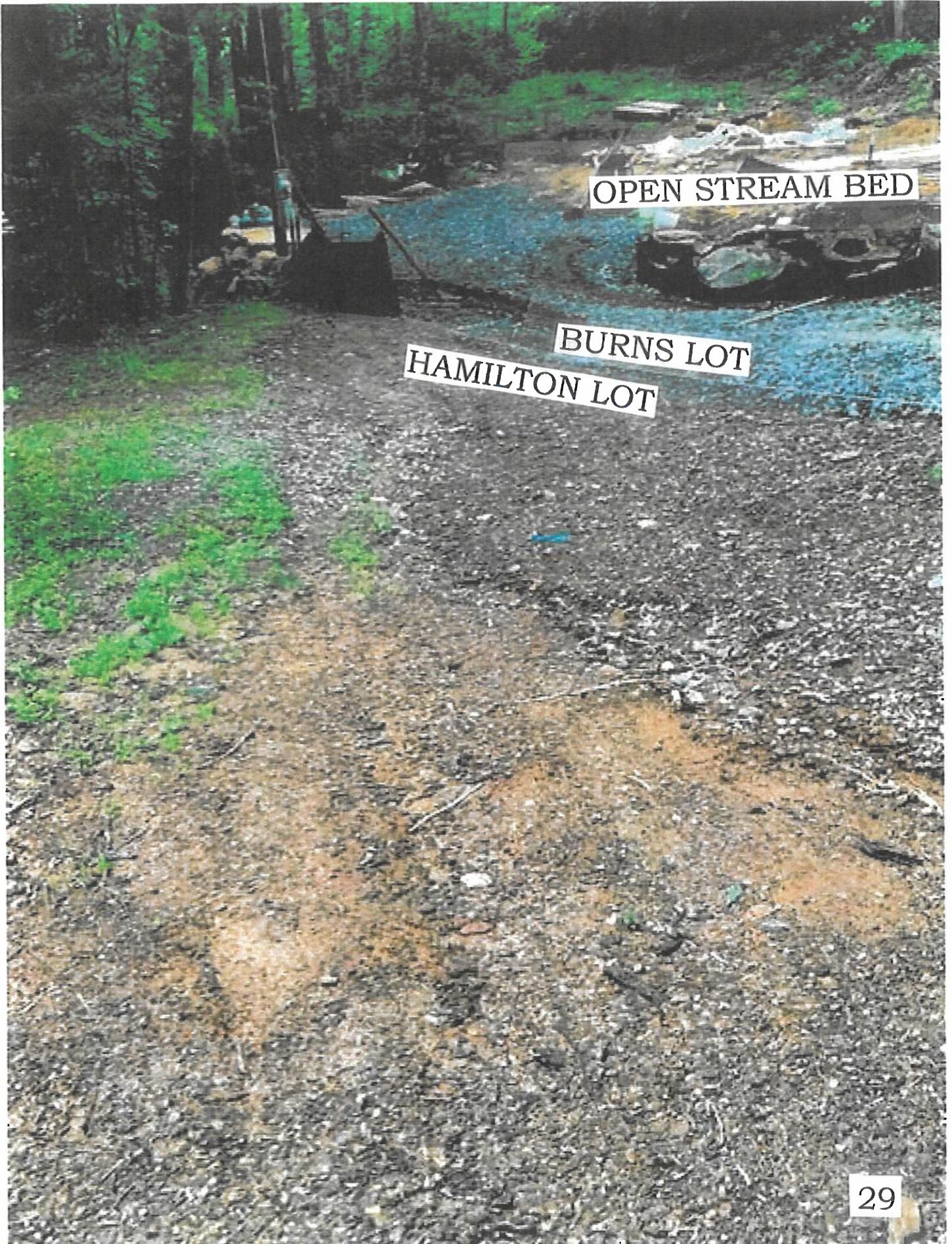
UNADDRESSED MEANS MAJOR HELENE EROSION



HAMILTON LOT

OPEN STREAM BED

BURNS LOT



► Resumes of Key Team Members and Resources

Wade DuBose Burns

Architect and Community Planner since 1974  
232 North Carolina Terrace  
PO Box 610  
Montreat, NC 28757  
828-231-0650  
wadeburns@bellsouth.net  
N.C.A.R.B Certificate #152116  
North Carolina Registered Architect #8310



President Jimmy Carter, Rosalynn Carter, Wade Burns

Education

Virginia Polytechnic Institute (Virginia Tech)  
College of Architecture and Urban Studies —  
5-year graduate

Work Experience

- 1969–1974: Project Architect for L. Miles Sheffer, A.I.A. and Danielson and Paine, A.I.A. Single- and multi-family housing, high-and low-rise office, recreational, industrial, religious facilities.
- 1974–1978: Owner and Manager of Architectural firm, Wade DuBose Burns, A.I.A.; Construction Company, Wade D. Burns Co.; and Development Company, West End Restoration

Consulting Projects

- 1974–1978 Atlanta, GA — The West End Residential District
- 1979–1983 Greenwood, SC — City Center Redesign
- 1981–1983 Laurens, SC — Public Square Revitalization
- 1984–1985 Walterboro, SC — Downtown Revitalization
- 1984–1986 Florence, SC — Central Business District Economic Revitalization Plan. City chose not to implement.
- 1983–1989 Atlanta, GA — The West End Commercial District Development Plan. Not yet implemented.
- 1988–1990 Augusta, GA — Riverfront Development Planning and Project Management
- 1991–1996 Atlanta, GA — Jimmy Carter’s Atlanta Project for the Homeless
- 1997–2011 Various residential, non-profit projects, and raising a family

The planning and community development efforts of Wade Burns since 1974 have been chronicled in more than 300 newspaper and magazine articles, including a dozen editorials and interviews. His work has received coverage from a number of sources, including:

- Voice of America
- CNN
- Russian Television
- Newsweek
- Associated Press
- TBS
- National Public Radio
- American Public Radio
- Canadian Brdcstg. Corp.
- Atlanta public officials
- President Jimmy Carter
- Homeless citizens

Past Civic and Non-Profit Board Service

- Member —Urban Design Commission, City of Atlanta (7 years)
- Vice Chair —Fulton County Zoning Appeals Board
- Chair — City of Atlanta Vending Review Board
- Chair — Leadership Atlanta Alumni
- President — Outstanding Atlanta
- President — Atlanta West End Rotary Club, Jimmy Carter Center
- Founder — Housing Starts Inc. (501c3) to help people who are homeless
- Various A.I.A. and non-profit boards
- Keynote speeches for A.I.A. and non-profits in 25 cities and 17 states.

## Appendix D: Design Portfolio (continued) – Wade DuBose Burns

### Atlanta, GA — West End Neighborhood Restoration 1974–1978

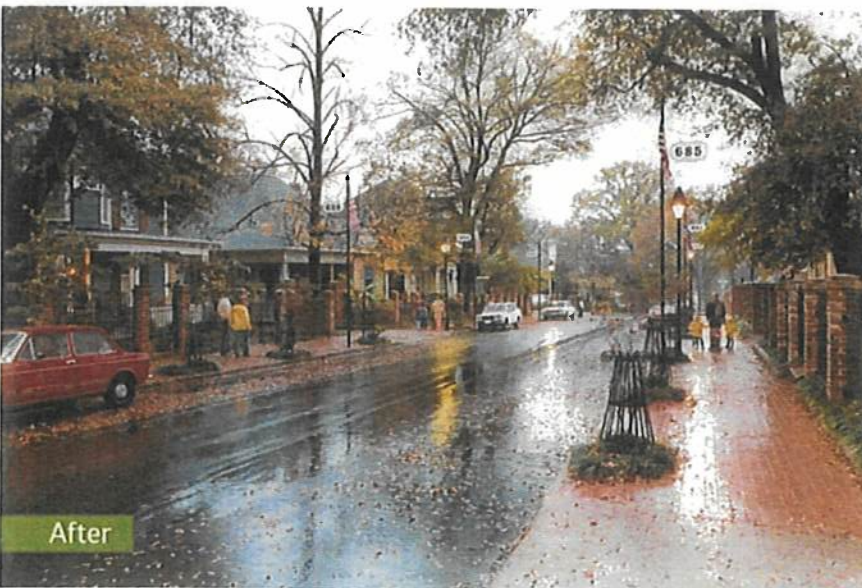
Wade Burns: architect, project manager, general contractor, and owner.

After an unsuccessful City/HUD Urban Renewal program, Burns became involved in this decaying, crime-infested community, moved there, eventually bought and rebuilt 25 homes. Surrounding property values increased 400% in 36 months. Crime and decay were eradicated, yet without displacement or gentrification. Burns was the sole architect, planner, and developer. The mayor of Atlanta was given the AIA’s highest design award for Georgia in 1977 “Streets for People.”

Three secretaries of the US Department of Housing and Urban Development (Carla Hills, Patricia Roberts Harris, and Henry Cisneros) have been personally involved in supporting the community work and planning efforts of the architect planner, Wade Burns.



Left to right: Wade Burns, HUD Secretary Patricia Harris, Mayor Maynard Jackson, and president of Central Atlanta Progress, Dan Sweat



In 1974, West End, Atlanta’s oldest neighborhood was beyond saving—even after a \$14 million unsuccessful City/HUD Urban Renewal Program.

The 25 Burns homes were purchased by some of Atlanta’s most respected leaders for up to \$96,000. This infusion of respected new residents gave a new dignity and momentum that continues to this day—without displacement or gentrification.

Peoples Street from the same location in 1979

**Appendix D: Design Portfolio (continued) – Wade DuBose Burns**

**Greenwood, SC — City Center Redesign 1979 – 1983.**

Thomas Wingard, was the Mayor.

Burns was the sole architect, urban planner. Redesigned the central business district, known as “The Great Greenwood Square,” claimed to be the widest Main Street in the world. This included all new traffic layout, two-story arcades, providing access to the second floors of uptown, and landscaping.

While proposed road layouts were integral to the plans, all engineering and highway engineering was performed by DOT and/or their contracted engineers. The design was 100% implemented.

The U.S. Dept. of HUD recognized the City as the best town revitalization in the Southeastern U.S.



Greenwood's Central Business District, or “uptown,” as it appeared prior to start of project.



Midway through the project: the N&S Railroad was relocated 3 blocks to the north. Two-level arcades were added to 3 city blocks.



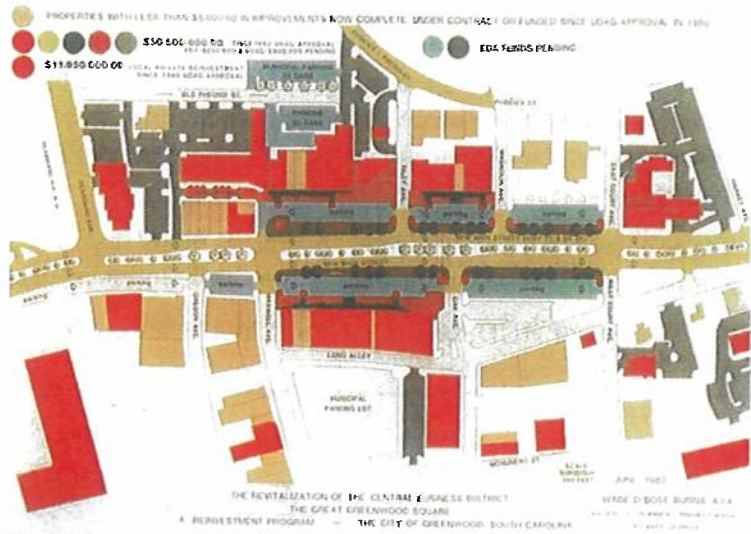
Burns leveraged an \$8 million commitment from 65% of the Central Business District owners to secure a HUD UDAG grant for \$1 million to build the two-level arcade.

Over the four years of the project, the community invested \$31 million. By 1996, the total had reached nearly \$100 million.

1996. Pedestrians crossed no more than two traffic lanes before reaching a green area.

**Appendix D: Design Portfolio (continued) – Wade DuBose Burns  
Greenwood, SC — City Center Redesign 1979–1983 (continued)**

Master plan, indicating funding sources of the \$31 million raised for the project.



The two-level arcade opened up 250,000 sq. ft. of usable space.



Functional, pleasant, and approachable, the Central Business District was rejuvenated.

**Appendix D: Design Portfolio (continued) – Wade DuBose Burns  
Greenwood, SC — City Center Redesign 1979–1983 (continued)**



A frightening prospect for pedestrians, before the tracks were relocated.



A view of the gauntlet of asphalt, trucks, and trains that pedestrians faced prior to the project.



From nearly the same location, shortly after completion of the project, green areas now parcel out the traffic, so pedestrians never cross more than two lanes.



Same location, 20 years after project completion.

## Appendix D: Design Portfolio (continued) – Wade DuBose Burns

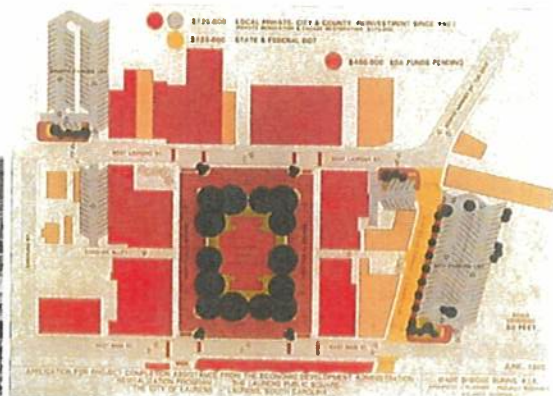
### Laurens, SC — Public Square Revitalization 1981 – 1983

Bob Dominic, was the Mayor.

Wade Burns was Architect, urban planner and Project Manager. The design was 100% implemented.

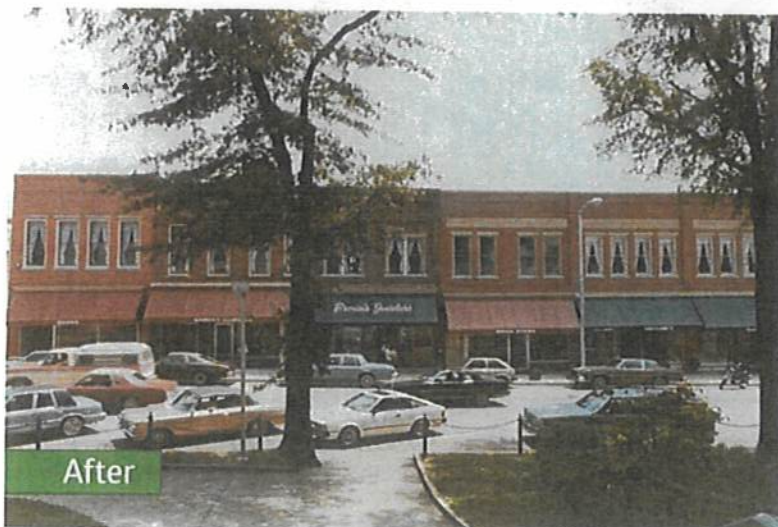
Included four city blocks of facades surrounding the courthouse, public parking and street improvements. Burns initiated a successful amendment to the SC Municipal Improvement Act that facilitated property owners' participation.

Burns was the sole architect for all building facades, urban planner and project manager. While proposed road layouts were integral to the plans, all engineering and highway engineering was performed by DOT and/or their contracted engineers.



Laurens public square revitalization plan and funding sources

December 1982 — At business owner's request, unsightly elements were to be prohibited by ordinance.



80% of the Uptown Laurens property owners petitioned the City Council to require all property owners to bring their respective facades into compliance with the Burns drawings they had approved within 12 months.

All facades were completed within six months, and no tax dollars were spent on private property improvements.

June 1983 — Ugly elements are removed, brick cleaned, windows repaired, new storefronts and awnings install, and perpetually maintained by the owners, according to the ordinance.

**Appendix D: Design Portfolio (continued) – Wade DuBose Burns**

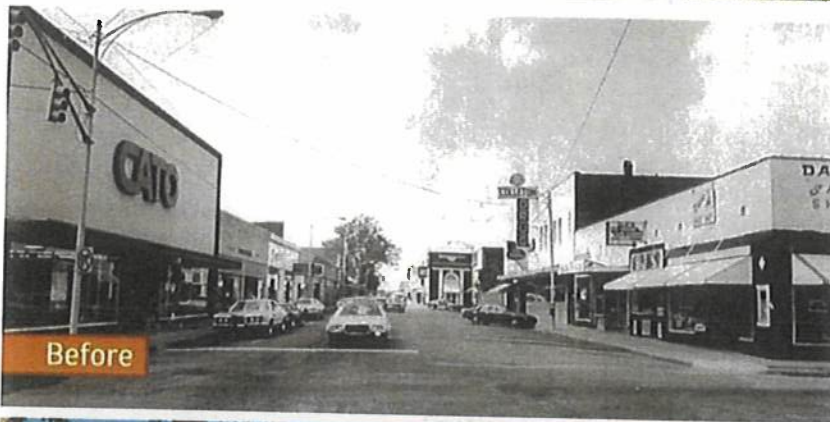
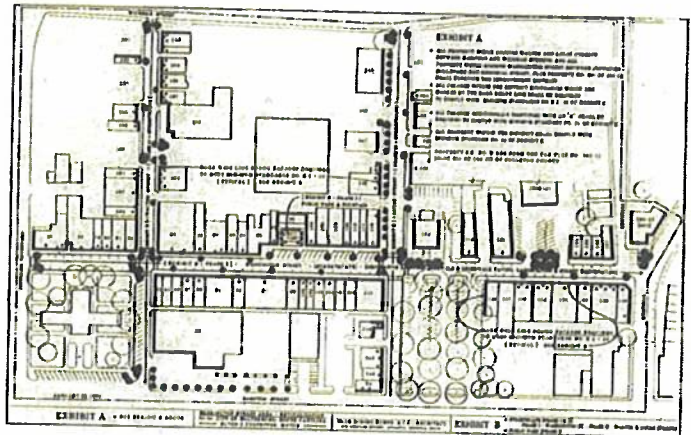
**Walterboro, SC — Downtown Revitalization 1984 – 1985**

Elton Culpepper, was the Mayor.

Wade Burns was Architect and Project Manager. The design was 100% implemented.

Included a “pocket park,” whose focal point is a two-story-high, 45-foot-wide waterfall feature, as well as facades, business street signage, and oyster shell sidewalks. Burns was the sole architect, urban planner and project manager for all work on public property, as well as street building facades.

Walterboro  
Revitalization  
Master Plan



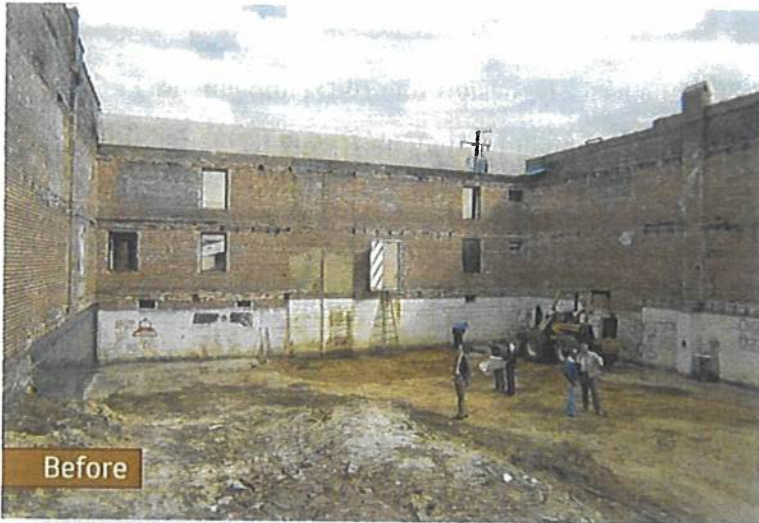
December 1982 — At business owner's request, unsightly elements were to be prohibited by ordinance.



June 1983 — Ugly elements are removed, brick cleaned, windows repaired, new storefronts and awnings install, and perpetually maintained by the owners, according to the ordinance.

**Appendix D: Design Portfolio (continued) – Wade DuBose Burns**

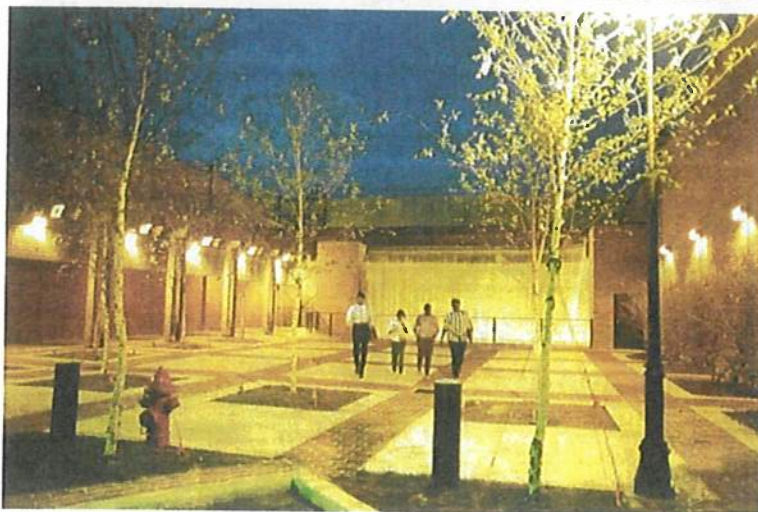
**Walterboro, SC — Downtown Revitalization 1984 – 1985 (continued)**



At the center of town was the gaping hulk of the old, burned-out dimestore. It would become the plaza.



The 45-foot-wide, curved “pocket” waterfall was constructed and pretested before installation.



The sound, motion, and light of the plaza all attract residents long after the shops have closed. Wade Burns conceived, designed, developed funding for, and managed construction of the plaza.

The entire Washington Street Plaza, with its waterfall, lighting, pedestrian surfaces, and landscaping were all designed, constructed, and completed for less than the city’s \$250,000 budget.

**Appendix D: Design Portfolio (continued) – Wade DuBose Burns**

**Augusta, GA — Riverfront Development, pop. 45,000**

1989 – 1990. Charles Devaney, was the Mayor

Monty Osteen was the president and CEO of Bankers First. The Architect was paid by Bankers First.

Wade Burns performed no design services but was hired to assemble the strategy, development team and financing scheme for the \$50 million Augusta Riverfront Project. The project was 100% implemented.



The riverwalk, passes by the conference center at left, the Radisson hotel and office towers in the background, and the entrance to the amphitheater at right.



Map of the Augusta Riverwalk area, with major commitments from several entities.



The singular passion and financial efforts of Bankers First CEO, Monte Osteen were critical. Burns was hired by Osteen, not as an architect, but rather to meld together the project components, new private participants, public and private funding and officially authorized to represent the City in the successful application and award of an \$7.56 million Urban Development Action Grant.



The amphitheater and its streetside entrance.

bring about the first "Class A" commercial development in Atlanta's Black southside since desegregation. Notwithstanding a significant personal investment, these efforts have been unsuccessful and there remains no such development south of the City.

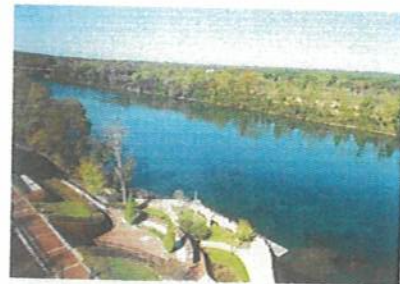
**1988 - 1990 Augusta, Georgia**



Assuming the roles of developer, urban planner and project manager, Wade Burns was brought in by Mayor Charles Devaney and Bankers First CEO, Monty Osteen, to put together a major new riverfront development following Augusta's numerous failed efforts. While Augusta is Georgia's second largest city, they had not built a new "Class A" commercial building downtown

since the late 1960's.

The project was redesigned with new facilities, finances and partners, with the planning and financing developed to overcome the market deficits that had been created from 23 years of drought in new "Class A" construction. Wade Burns put together the \$50 million and partners necessary and the new Augusta Riverfront center with a new conference center, hotel and office tower successfully opened in time for the 1992 Masters Golf Tournament. The projects, which have drawn national attention, have also been very successful financially.



This work was accomplished by Wade Burns and 4 other consultants under his direction. The architecture was designed by others.

**1991 - 1996 Atlanta, Georgia  
The Atlanta Project**

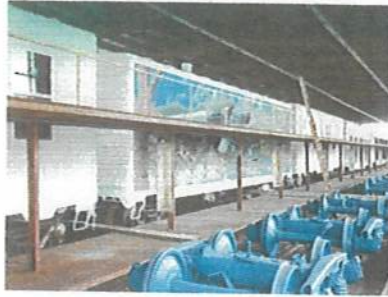
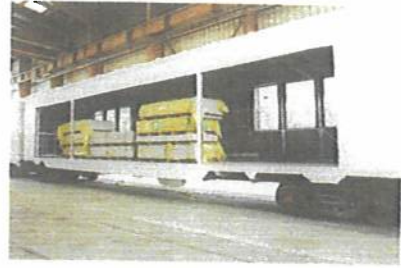


Assuming the roles of concept development, program development, planner, architect and manufacturer, Wade Burns was brought in by Dan Sweat, director of former President Jimmy Carter's Atlanta Project to address the difficult need for homeless housing.



Wade Burns formed a 501,c,3 non profit, community owned, and funded nearly half of a \$1.5 million effort to

rebuild donated rail cars into modular housing units for the homeless. This effort would save 90% over traditional housing presently being developed for the homeless. The foundations of AT&T, Trust Company Bank, Equitable, Georgia Tech, Lettie Pate Evans (Coca Cola) and The Atlanta Metropolitan, matched Wade Burns



funding. Wade Burns led efforts in The Carter Collaboration Center to develop the program component for this effort. Homeless agencies, homeless people, separately and then together, determined what would work, what was fair and how to implement the “back on your feet” counseling and classroom program. Georgia Tech’s College of Architecture provided 6 students

who worked on the project while receiving academic credit.

The project was praised worldwide but failed to secure the necessary City support for Federal funding. Wade Burns personally guaranteed loans to fund the construction of the rail car prototypes that were rebuilt in a former General Motors Chevrolet factory. After satisfying these obligations, Wade Burns has moved from Atlanta to his family cottage in Montreat, North Carolina.



### **Civic and Non Profit Board Service**

1999 - President, Atlanta West End Rotary Club, Jimmy Carter Center

1999 - Chair, City of Atlanta Vending review board

Past Service:

Chair, Leadership Atlanta Alumni

President, Outstanding Atlanta

Campaign Chair, 102<sup>nd</sup> Congress, Congressman John Lewis

Vice Chair, Fulton County Zoning Appeals Board

Vice Chair, Urban Design Commission, City of Atlanta

Cystic Fibrosis, YMCA, Members Guild (High Museum of Art)

Various A.I.A. and community boards.

Keynote speeches for non profits in 25 cities, 17 states.

### **Honors:**

Wade Burns has received several design awards and honors including the A.I.A. Honor Award which is Georgia’s highest design award.

## ATTACHMENT 7

## **Memorandum of James and Kristina Hamilton to the Montreat Planning and Zoning Commission in Opposition to the Conditional Zoning Application by Wade and Susie Burns**

Wade and Susie Burns have filed an application for Conditional Zoning for their approximately 75' by 150' lot located at 779 Foreman Siding in the Montreat Extraterritorial Jurisdiction on which they have constructed a house. The Burns application appears to be controlled by Section 510 of the Montreat Zoning Ordinance that governs the establishment of a "Conditional Zoning District." By this memorandum, James and Kristina Hamilton, owners of an adjacent lot and home, oppose the Burns application that, for example, exposes Montreat to environment harm, seeks to avoid rigorous variance standards put in place to protect Montreat from such harm, and attempts to avoid the proper venue for considering such variance requirements.

### **1. Factual Background**

The Hamiltons' Montreat residence is at 780 Foreman Siding in the Montreat Extraterritorial Jurisdiction. The house was built by Mr. Hamilton's grandfather in 1908.

The Hamilton property adjoins the Burns property that is the subject of the application. That property is intersected by a stream bed that, just a few feet from the Burns house, continues onto the Hamilton property for around 100 feet before it enters Flat Creek.

The stream starts in a spring higher up in the mountain, the source of water for the Hamiltons' home for around 70 years or more. The stream flows above ground until it goes underground on Mountain Retreat Association property not very far above the Burns property. It then flows underground into Flat Creek.

However, in times of customary rain, the stream flows overground on the Burns Property and the Hamilton Property and then into Flat Creek. At times the flow is a torrent. At times it reaches flood stage as it did in May 2018, when a flood washed out the road above the Mountain Retreat Association property. At an October 27, 2022 variance hearing before the Montreat Board of Adjustment, Mr. Burns said that the stream is a "very important waterway for storms" (Video Recording timestamp: 1:47:53). The record of a July 28, 2022 hearing before the BOA on the applicability of Section 305.1 of the Montreat Stormwater Ordinance contains videos of stormwater rushing down the stream bed.

The Town of Montreat website says that stormwater and sediment is the number one cause of pollution in Montreat.

## 2. Board of Adjustment Proceedings

The BOA made several rulings in the Burns' favor. It ruled that the 30 feet stream setback rule found in Section 305.1 of the Montreat Stormwater Ordinance had no application to the stream on the Burns' property because it is ephemeral. The BOA also granted the Burns front yard and side yard setback variances to the setbacks prescribed by the Montreat Zoning Ordinance.

The North Carolina Superior Court reversed the BOA in both respects, with an Order attached hereto. The Court held that the 30 feet stream setback buffer applied to the stream at issue, which is shown on several US Government maps. It held that the BOA committed various legal errors in granting the variances, including the failure to consider significant evidence of environmental harm that could result from granting a front yard setback variance. The Court's rulings are discussed further below. The site plan submitted by the Burns does not reflect the fact, as required by the language of the application ( page 2 ), that their construction after the Court's ruling is in violation of the stream, front yard and side yard setback requirements found in the Montreat Stormwater and Zoning Ordinances.

## 3. The Request For Conditional Zoning Should Be Denied

There are multiple reasons why this Commission should not recommend the creation of a Conditional Zoning District for the single lot in the ETJ owned by the Burns on which they have built a house.

- a. As testified by two experts to the BOA, the construction on the lot presents environmental dangers. The experts were Zan Price of Jennings Engineering in Asheville and Montreat's own William Seamans, who heads the taskforce on Flat Creek.

The Burns have surrounded the approximately 26 feet of stream bed on their property with built-upon areas, as defined by the Montreat Stormwater Ordinance. Most of the west side of the stream bed is occupied by a substantial house with extensive roofing built on top of the stream bed. On the north, east and south sides of the property is an impervious or partially impervious gravel driveway. In effect, the Burns have created a sink into which polluted stormwater can flow. The south part of the driveway is only a couple of feet from the Hamilton portion of the stream bed.

Under Section 305.1 of the Montreat Stormwater Ordinance, there must be a 30 feet buffer between the stream and any built-upon area. That provision assumes

that polluted stormwater will flow off of built-upon areas. Stormwater, sediment and gravel have entered the Hamilton property, including from the culvert that enters their portion of the stream bed from the Burns property.

- b. The North Carolina Superior Court found that the 30 foot buffer applies to the stream on the Burns property. The Court said (paragraph 10, Findings of Fact Specific to BOA Section 305 Ruling): “Pursuant to the plain language of Section 305, the 30-foot setback rule applies to the stream on [the Burns] Property.” Thus, the house and gravel driveway are in violation of the Montreat Stormwater Ordinance.
- c. Mr. Burns asserts that he is entitled to Conditional Zoning because he has installed stormwater control measures on his property. Thus, he in essence says he can avoid the 30-foot setback rule in Section 305 of the Montreat Stormwater Ordinance. It is, however, reasonable to conclude that no stormwater measures can prevent considerable stormwater from cascading off the extensive roofing over the stream bed during the heavy rains that Montreat experiences. ( We can provide the Commission with a video showing stormwater running off the Burns’ front porch roof above the stream bed during a recent heavy rain.) “Montreat Tomorrow”, the Montreat Comprehensive Plan, notes at page 25 that in the last 50 years heavy rains have increased by 27% in the south-eastern US. Events like Helene raise the specter of more serious weather to come and heighten the need for increased stormwater protection.

Mr. Burns says that stormwater from his roof is collected in tanks and slowly released into the stream bed. But that stormwater, which will almost immediately end up in the Hamilton portion of the stream bed, will presumably still carry pollutants it picked up on the Burns roof. The pipe releasing the stormwater is not shown on the Burns site plan.

Moreover, to accept the Burns’ argument would allow any property owner to avoid the 30 feet setback requirement by installing stormwater control measures. That is not what Section 305 intended. Adopting the Burns’ proposal would in effect generally negate the important requirement of that provision regarding the myriad streams in Montreat.

- d. It is also reasonable to conclude that no stormwater measures will prevent considerable amounts of polluted storm water from flowing into the stream bed from the gravel driveway on the north, east and south sides into the stream bed. As

the site plan shows, Mr. Burns has canted the gravel driveway on the east side toward the stream bed.

Moreover, on the MRA right of way, Mr. Burns has built a wall, apparently without specific MRA permission to do so, that diverts water away from his property toward the Hamilton property. This is shown by the fact that Mr. Burns has installed a drain at the end of the wall and in front of the Hamilton property near where they park their cars. That drain empties directly without permission into the Hamilton part of the stream bed through a pipe that Mr. Burns has installed. Also, a few feet uphill from that drain on the edge of the right of way Mr. Burns has installed a 3' by 15' drain that diverts water away from the Burns property and empties it directly into the Hamilton stream bed through the same pipe without permission. All this is improper and should not be condoned by any action by the Town. The Burns site plan does not show the pipe draining stormwater into the Hamilton portion of the stream bed.

- e. Montreat has now adopted stringent standards for a variance from the requirements of Section 305. The amendment, found in new Section 319, provides that to achieve a variance from the Stormwater Ordinance a petitioner must show, among other things, that: "The requested variance is consistent with the spirit, purpose and intent of the stormwater management regulations....[and] will secure public safety..." It would not be in accord with the "spirit, purpose and intent" of Section 305, nor would it secure "public safety", to allow that section easily to be avoided by the installation of stormwater control measures.
- f. Section 319 also requires an "unnecessary hardship" before a variance is allowed. There is none here, because the Burns could have moved their house 30 feet from the stream bed since they own a 150' by 150' lot immediately to the west of the lot at issue.
- g. Mr. Burns also is attempting to avoid what the Superior Court called the "very strict" variance requirements in the Montreat Zoning Ordinance. Specifically, he seeks to avoid the provision that, as the Superior Court found, requires the consideration of environmental factors in the variance determination. The Court said (Paragraph 15b, Conclusions In Law) that the BOA erred by: "Failing and refusing to consider evidence of environmental harm offered by {the Hamiltons}, including such evidence from Zan Price of Jennings Environmental of Asheville, and Dr. William Seamans, former chair of Montreat Landcare, which evidence was and is relevant to...the

requirement of insuring that public safety is secured..." The Court also found (Paragraph 16) that in other respects the BOA's variance rulings were "arbitrary and capricious" and thus unlawful.

- h. We submit that Mr. Burns is improperly attempting to circumvent the established procedure for variances found in the Montreat ordinances. He sought certain variances before the BOA, but its decisions have been struck down by the Superior Court, which remanded the matter to the BOA. Mr. Burns has appealed the Court rulings reversing the BOA. Yet before this Commission he is in effect seeking variances he has so far been unable to achieve in the BOA proceeding. We respectfully submit that a proceeding before this Commission seeking a Conditional Zoning District is the wrong forum in which to seek variances. If the Commission approves this application, it may encourage other property owners to seek to avoid BOA proceedings where the stringent variance requirements of the Zoning and Stormwater Ordinances must be applied and to attempt to obtain relief through the establishment of Conditional Zoning Districts for single pieces of property.
- i. Ant amendment to the Zoning Ordinance must, under Section 309, be justified by the "general welfare, or good zoning practices." What the Burns propose would not be justified by the "general welfare", since it would create environmental hazards for Flat Creek. Nor would it be justified by "good zoning practices", since their application seeks to bypass the variance procedures assigned to the BOA. Allowing a Conditional Zoning District here would be arbitrary and, because it would create a risk of stormwater pollution to the Hamilton property and Flat Creek, could allow an unlawful nuisance.
- j. "Montreat Tomorrow" (page 42) under the heading "Environment", states that the Town should "Explore the adoption of additional stream protection ordinances." The Conditional Zoning the Burns seek would run counter to that admonition.
- k. The Burns built their house while the N.C. Superior Court was considering the Hamilton appeals. However, quoting N.C.G.S. Section 160D-1402 (l) (1), the Superior Court's Order states in Paragraph 6 of the Wherefore clauses that the Burns "shall not be deemed to have gained any vested right on the basis of actions taken prior to or during the pendency of the appeal and must proceed as if no development approval has been granted." In other words, they gain no benefit in this proceeding from the fact that their house is now built and occupied.

- I. We respectfully submit that, in reviewing the Burn's application, the Commission may wish to visit the Burns site to verify the statements made above about the built-upon areas of their property and their improper stormwater control measures.

4. Conclusion

The Burns request for Conditional Zoning for their single lot should be denied.

Respectfully submitted,

  
James and Kristina Hamilton

9/18/25

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

COUNTY OF BUNCOMBE

JAMES HAMILTON and KRISTINA  
HAMILTON,

Petitioners,

vs.

TOWN OF MONTREAT, NORTH  
CAROLINA; WADE BURNS and SUSIE  
BURNS,

Respondents.

22 CvS 3602

FILED

DATE: June 17, 2025

TIME: 3:28:44 PM

BUNCOMBE COUNTY

CLERK OF SUPERIOR COURT

BY: M. Stone

JAMES HAMILTON and KRISTINA  
HAMILTON,

Petitioners,

vs.

TOWN OF MONTREAT, NORTH  
CAROLINA; WADE BURNS and SUSIE  
BURNS,

Respondents.

22 CvS 4742

### ORDER

THIS CAUSE coming on to be heard and being heard before the Honorable Marvin P. Pope at the May 2, 2025 Special Session of Superior Court, with the consent of the parties, as a continuation and completion of the hearing commenced on September 9, 2024, upon the Petitioners' Petitions for Writ of Certiorari review of Petitioners' consolidated appeals pursuant, at least in part, to N.C.G.S. §§ 160D-1402 and §§310.1 and 310.7 of the Town of Montreat Zoning Ordinance of the following matters: (1) the Town of Montreat Board of Adjustment August 25, 2022 Order denying Petitioners' appeal of the Zoning/Development Compliance-Certificate issued by the Montreat Zoning Administrator on March 11, 2022 (the "Section 305 Ruling"); and (2) the Town of Montreat Board of Adjustment November 23, 2022, Order granting the Burns Respondent two variances regarding their building project on Lot 778 in the Montreat Extraterritorial Jurisdiction (ETJ) (the "Variance Rulings"), and; upon the Court's review of the entire record in these matters, as stipulated to by the parties and as otherwise may have been supplemented by ruling of the Court as reflected in the record, and after hearing

arguments of counsel for Petitioners, Tom Holman, and counsel for the Respondents, T.C. Morphis (with respondent Town of Montreat declining to be heard at hearing on these matters), and with the Court having determined that the respective orders of the Town of Montreat Board of Adjustment pertaining to both the Section 305 Ruling and the Variance Rulings should be reversed, the Court hereby makes the following:

## **FINDINGS OF FACT**

### **I. Factual and Procedural Background.**

1. This case involves Petitioners' consolidated appeals from two rulings by the Town of Montreat Board of Adjustment ("BOA") relating to proposed construction activities on the neighboring real property of Respondents in the Town of Montreat's Extraterritorial Jurisdiction (the "Respondent Property"), consisting of:

(a) Petitioners' appeal from the BOA's August 25, 2022 Order affirming, by a vote of 5-1, the decision of the Town's Zoning Administrator that Section 305.1 of the Montreat Stormwater Ordinance did not apply to require a 30-foot stream buffer on the Respondent Property (the "Section 305 Ruling"), and

(b) Petitioners' appeal from the BOA's grants of two variances regarding building setbacks on the Respondent Property, one pertaining to the Town's 30-foot front yard building setback and the second pertaining to the Town's 15-foot side yard building setback (the "Variance Rulings").

2. At all times pertinent to Petitioners' appeals in these matters, Petitioners have been the owner of real property and the residence thereon located at 780 Foreman Siding in the Montreat Extraterritorial Jurisdiction ("Petitioner Property").

3. At all times pertinent to Petitioners' appeals in these matters, the Burns Respondents have been the owners of the real property located at 778 Foreman Siding in the Montreat Extraterritorial Jurisdiction ("Respondent Property").

4. Petitioners' appeals in these consolidated matters pertain to rulings relating to the construction of a single-family residence on the Respondent Property.

5. The Petitioner Property adjoins the Respondent Property that is the subject of these appeals. The Respondent Property is intersected by a stream bed that ultimately enters Flat Creek.

### **II. Findings of Fact Specific to BOA's Section 305 Ruling.**

6. Petitioners' initial appeal is from the BOA's August 25, 2022, Order affirming the Town Zoning Administrator's interpretation and application of Section 305.1 of the Montreat Stormwater Ordinance ("Section 305"), which provides as follows:

All built-upon area shall be at a minimum of 30-foot landward on all sides of any surface water as measured horizontally on a line perpendicular to a vertical line marking the edge of the top of the bank. A perennial or intermittent surface water shall be present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of ISA NCAC 2B .0233 (3) (a) or similar site-specific determination made using Division of Water Quality-approved methodology.

7. The first sentence of Section 305 sets forth the purpose of the provision, which is to prevent any “built-upon area” from being located any closer than 30-foot from any “surface water,” as further defined in Section 305.

8. The second sentence of Section 305 provides that “[a] perennial or intermittent surface water ‘shall be present’ if the feature is approximately shown on” certain specified U.S. government maps. It is undisputed that the 30-foot setback rule in Section 305 applies to perennial and intermittent surface waters, and that the stream at issue on the Respondents’ Property is shown on such U.S. government maps. Under Section 305, approximately 75 feet or so up the mountain from the Respondents’ Property, where the stream is designated intermittent, no house or other built-upon would be allowed within the 30-foot stream setback.

9. The third sentence of Section 305 continues by providing that “an exception” to the requirement set forth in the second sentence “may be allowed when surface waters are not present” according to the remaining provisions set forth in the third sentence.

10. Pursuant to the plain language of Section 305, the 30-foot setback rule applies to the stream on Respondents’ Property based on the second sentence, and an exception would be required pursuant to the third sentence in order to relieve the property of the obligation of the 30-foot setback.

11. The Town Zoning Administrator at the time, Scott Adams, concluded that the 30-foot setback requirement pursuant to Section 305 did not apply to the Respondents’ property because the stream located on the property was an “ephemeral stream,” and that Section 305 did not apply to ephemeral streams. Based on this determination, the Zoning Administrator issued a Certificate of Zoning Compliance that was a precondition to the building permit that the Town ultimately issued allowing Respondents to proceed with construction of a single-family home on their property without any setback restriction under Section 305.

12. A building permit was issued to Respondents on April 12, 2022, and at some point thereafter the Respondents proceeded with the construction of a residence.

13. Petitioners filed a timely appeal to the BOA from the Zoning Administrator’s determination under Section 305, and the issuance of the Certificate of Zoning Compliance, on

April 20, 2022, which appeal placed Respondents on notice of Petitioners' legal challenge of any building activity within the 30-foot setback of the stream on the Respondent Property.

14. The BOA held a hearing on the appeal on July 28, 2022, and August 4, 2022, and by a vote of 5-1, voted to uphold the Zoning Administrator's determination under Section 305 and its issuance of the Certificate of Zoning Compliance.

15. At the stormwater hearing relating to Section 305, the BOA ruled that the "sole issue" was whether the 30-foot setback rule in Section 305 applied in any circumstance to ephemeral streams. Finding that it did not, the Board declared that the environmental evidence was irrelevant to the setback determination at issue.

16. Against objection by Petitioners, the BOA declined and refused to consider any testimony and evidence of environmental harm that would or could result by allowing construction of the proposed home within the Section 305 30-foot setback, ruling that such evidence was not relevant to the BOA's consideration relating to the Section 305 ruling.

17. The BOA issued its written order relating to Petitioners' Section 305 appeal on August 25, 2022. In its order, the BOA, as did the Zoning Administrator, found that the 30-foot stream setback requirement set forth in the first sentence of Section 305 has no application in any circumstance where the stream has been designated "ephemeral."

18. The BOA found that it has no discretion to apply the 30-foot setback requirement to an ephemeral stream, even one shown on specified U.S. Government maps and even to prevent environmental harm.

19. The BOA thus has not exercised its discretion regarding the stream at issue to determine that an exception "may be allowed" to the requirement in the second sentence of Section 305.1 that a perennial or intermittent stream "shall be present" when the stream is shown on certain U.S. government maps. Consequently, the 30-foot setback rule applicable to perennial and intermittent streams continues to apply to the stream at issue.

20. Petitioners filed a timely appeal from the BOA's Section 305 ruling on September 21, 2022.

## **II. Findings of Fact Specific to BOA's Variance Rulings.**

21. Petitioners' second appeal in this matter pertains to the BOA's granting of two variances to Respondents relating to the construction of their planned residence on the Respondent Property consisting of a variance from (a) the Town's applicable (a) 30-foot front yard setback and (b) the Town's 15-foot side-yard setback.

22. Petitioners opposed the variance requests and the BOA ruling on the grounds that, as to both, the Respondents had not established by "competent, material, and substantial evidence" that each of the six mandatory requirements for a variance grant required by the Montreat Zoning Ordinance is present.

23. Petitioners also opposed the BOA's variance rulings on the grounds, *inter alia*, that the BOA erred as a matter of law in (a) failing to follow specified procedures and make the required findings to support each of its two grants of variance, and (b) failing and refusing to allow and consider evidence of environmental harm relating to Respondents' variance requests.

24. The Respondent Property is located in the R-3 Residential Zoning District.

25. On or about September 14, 2022, as part of their plans to build a single-family residence on the Respondent Property, Respondents submitted an application for two building variances pursuant to Section 310.5 of the Zoning Ordinance of the Town of Montreat after the Town notified them that it had made an "error" in relying on Section 609 of the Montreat Zoning Ordinance in granting them a Certificate of Zoning Compliance.

26. The public hearing for Respondents' variance requests was properly noticed in accordance with all applicable laws and regulations governing the noticing requirements for public hearings. Respondents, through Wade Burns, appeared and testified at the hearing in support of Respondents' variance requests, and Petitioners, through counsel, Tom Holman, appeared at the hearing and presented evidence and argument in opposition to the requests for variance.

27. The first variance Respondents requested was to reduce the front yard building setback, for the house fronting Foreman Siding, by 50% - from 30 feet to 15 feet.

28. The Respondents' second variance request was for a variance from 15-foot to 13 feet for the side yard setback on the western side of the property for a chimney.

29. Prior to approving any variance, Section 310.42 of the Ordinance provides that the BOA must find that each of the following very strict requirements are satisfied for each of the requested variances:

- (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.

30. In granting the variances, the BOA simply stated in conclusory fashion the language of the ordinance. It did not in writing show that its decisions were based on “competent, material, and substantial evidence.” It did not resolve the contested facts in writing or explain in how the facts related to the applicable standards.

31. Here the two variances involved (relating to front and side yards) were granted by two separate votes. The Board, however, failed to make separate findings as to each grant of variance.

32. Contested issues of fact regarding the front yard setback variance as to several mandatory criteria were not resolved in writing. One such issue is whether an “unnecessary hardship” required the front yard setback variance.

**WHEREFORE, BASED ON THE FOREGOING FINDINGS OF FACT, THE COURT MAKES THE FOLLOWING:**

**CONCLUSIONS OF LAW**

1. These consolidated matters are properly before the Court for review of the BOA’s (1) August 25, 2022 Order denying Petitioners’ appeal of the Zoning/Development Compliance-Certificate issued by the Montreat Zoning Administrator on March 11, 2022 (the “Stormwater Appeal”); and (2) the BOA’s November 23, 2022, Order granting the Burns Respondent two variances regarding their building project on Lot 778 in the Montreat Extraterritorial Jurisdiction (the “Variance Appeal”).

2. Petitioners have standing relating to both of their appeals before the Court.

3. Petitioners timely filed both of their Petitions for Writ of Certiorari in these consolidated matters.

4. The Court has jurisdiction over the parties hereto and the subject matter hereof, and both of the Petitioners’ Petitions for Writ of Certiorari in these matters are properly before the Court for review in accordance with North Carolina law.

5. The Court is not barred, whether by laches, Petitioners’ failure to appeal certain aspects of the Zoning Administrator’s grant of a Certificate of Zoning Compliance or otherwise, from hearing and ruling upon the matters and BOA rulings that are the subject of the

consolidated appeals in this matter, including but not limited to the BOA's grant of Respondents' requests for variances from the Town's front and side yard setback requirements, and both appeals were properly heard and ruled upon by the Court pursuant to this Order.

6. This consolidated matter was properly heard by the Court, with the consent of the parties, at an initial scheduled session of Superior Court, Buncombe County, North Carolina, on September 9, 2024, and a second special session on May 2, 2025, and with the consent of the parties the Court was authorized to enter the order in this matter out of term and out of session.

7. N.C.G.S. §1600-406(g) provides that "[t]he board shall determine contested facts... Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced in writing [and] reflect the board's determination of the contested facts, and their application to the applicable standards."

8. As the N.C. Court of Appeals has recognized, "Findings of fact are an important safeguard against arbitrary and capricious action by the BOA because they establish a sufficient record upon which this Court can review the Board's decision." *Crist v. City of Jacksonville*, 131 N.C.App. 404, 405, 507 S.E.2d 899, 900 (1998).

9. Further, in making its findings of fact, the BOA is required "to state the basic facts on which it relied with sufficient specificity to inform the parties, as well as the court, what induced its decision." *Deffet Rentals, Inc. v. City of Burlington*, 27 N.C.App. 361, 365, 219 S.E.2d 223, 226-27 (1975). "Conclusionary statements" of facts are "insufficient." *Premier Plastic Surgery Ctr., PLLC v. Bd of Adjustment for Town of Matthews*, 213 N.C. App. 364, 373; 713 S.E. 2d. 511 (2011).

10. Among other errors of law set forth above, the BOA failed in each of the appeals before the Court to make sufficient findings of fact to support its decisions. Asserted errors of law by the BOA are reviewed *de novo*. *Premier Plastic Surgery Ctr., PLLC v. Bd of Adjustment for Town of Matthews*, 213 N.C. App. 364, 372; 713 S.E. 2d. 511.

11. Regarding Petitioners' appeal from the BOA's Section 305 Ruling, the BOA erred as a matter of law in interpreting and applying Section 305 relating to Section 305's requirement of a 30-foot stream setback, including:

- a. Failing to find and conclude that the stream on the Respondents' Property qualifies as a "perennial or intermittent surface water" pursuant to the second sentence of Section 305 as a result of the stream being depicted on U.S. Government maps as provided for in the second sentence of Section 305;
- b. Failing to find and conclude that the BOA had the discretion and authority to decide whether the Respondents' Property was subject to the 30-foot setback as provided for in Section 305;
- c. Finding that the BOA's interpretation and application of Section 305 ended with the determination that the stream on Respondents' Property was

ephemeral, and that the BOA was required as a result to find and conclude that the 30-foot setback requirement provided for in Section 305 did not apply to Respondents' Property;

- d. Finding that the 30-foot stream setback requirement set forth in the first sentence of Section 305 has no application in any circumstance where a stream has been designated "ephemeral";
- e. Failing to find and conclude that evidence of environmental harm was relevant and material to determining whether the BOA should exercise discretion to find and conclude that the ephemeral stream on Respondents' Property should or should not be subject to the 30-foot stream setback requirement provided for in Section 305;
- f. Failing and refusing to consider competent, material, and substantial testimony and evidence from Petitioners and others, including but not limited to evidence of environmental harm from Petitioner James Hamilton, Zan Price of Jennings Environmental of Asheville, and Dr. William Seamens, former Chair of Montreat Landcare, in deciding whether to require or not require Respondents to comply with the 30-foot stream setback requirement provided for in Section 305; and
- g. Otherwise failing to interpret and apply Section 305 as plainly written and to otherwise support its decision by competent, material and substantial evidence in the record.

12. The BOA is not required to follow the opinion or any decision of the former Zoning Administrator or any State employee in determining how to interpret Section 305.

13. Prior to exercising any discretion under Section 305, the BOA should take into account, and properly consider, evidence of potential environmental harm to Petitioners' Property, Flat Creek or other property that may result from not applying the 30-foot setback provided for in Section 305 to the stream at issue.

14. Respondents, as the variance applicant, must show by competent, material and substantial evidence that each of the required six very strict mandatory requirements of the Zoning Ordinance are present for each of the two, distinct variance requests.

15. Regarding Petitioners' appeal from the BOA's Variance Rulings, the BOA erred as a matter of law in interpreting and applying the applicable provisions relating to Respondents' requests for both front and side setback building variances by:

- a. Failing to support its decisions by competent, material and substantial evidence as to each of the six mandatory variance requirements for each of the two, distinct variance requests, and by issuing unsupported and conclusory findings that lack sufficient

reasoning or support in paragraphs 12.a., b., c., d., e., and f of the BOA's Variance Rulings;

- b. Failing and refusing to consider evidence of environmental harm offered by Petitioners, including such evidence from Zan Price of Jennings Environmental of Asheville, and Dr. William Seamens, former Chair of Montreat Landcare, which evidence was and is relevant to one or more of the required six mandatory variance requirements, including the requirement of ensuring that public safety is secured, and which evidence was previously offered in the Section 305 hearing where the BOA recognized its relevance for the Respondents' request for variances;
- c. Failing to sufficiently reduce to writing its findings and conclusions supporting its decision to affirm the granting of each of the Respondents' requests for variance, and failing to resolve contested facts relating to the six mandatory criteria in writing;

16. Regarding Petitioners' appeal from the BOA's Variance Rulings, the Court concludes based upon a review of the whole record, the insufficient conclusory findings in the BOA's decision and the ambiguity created by that decision's failure to distinguish between the two, distinct variance requests, that the BOA's decision was arbitrary and capricious and does not contain sufficient findings and conclusions as to each of the six mandatory requirements to support the two, distinct variance requests.


**WHEREFORE**, based upon the foregoing findings of fact and conclusions of law, the Court hereby orders and decrees as follows with regard to the consolidated appeals in this matter:

1. That the Town of Montreat Board of Adjustment's August 25, 2022 Order affirming the Town's Zoning Administrator's decision that Section 305.1 of the Montreat Stormwater Ordinance did not apply to require a 30-foot stream buffer on the Respondent Property is reversed, and this matter is remanded to the BOA for further hearing and decision in accordance with this Order;
2. That the Town of Montreat Board of Adjustment's October 27, 2022 Order granting two variances regarding building setbacks on the Respondent Property, one pertaining to the Town's 30-foot front yard building setback and the second pertaining to the Town's 15-foot side yard building setback, is reversed as to both variances, and this matter is remanded to the BOA for further hearing and decision in accordance with this Order;
3. That at the rehearing of these matters, the BOA must consider competent evidence of environmental harm relating to potential damage to Petitioners' property, Flat Creek, or other property as a result of decisions pertaining to both Section 305 and granting of the variances.
4. That the BOA's rehearings in these matters otherwise comply with the Court's findings of fact and conclusions of law set forth hereinabove;
5. That the rehearing on both matters shall be *de novo*.

6. That at the rehearing of these matters and pursuant to N.C.G.S. §1600-1402(l)(1), Respondents “shall not be deemed to have gained any vested rights on the basis of actions taken prior to or during the pendency of the appeal and must proceed as if no development approval had been granted”;
7. That the costs of this action <sup>6/13/2025 9:52:26 AM</sup> are taxed against the Respondents.

THS the \_\_\_ of June, 2025.

6/13/2025



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The Honorable Marvin P. Pope  
Superior Court Judge Presiding