

Town of Montreat
Board of Commissioners Meeting – Public Forum
December 11, 2025 – 5:30 p.m.
Town Hall

I. Call to Order

- Welcome
- Moment of Silence

II. Agenda Adoption

III. Public Comments

IV. Adjournment

**Town of Montreat
Board of Commissioners
Town Council Meeting
December 11, 2025 – 6:00 p.m.
Town Hall**

I. Call to Order

- Pledge of Allegiance
- Moment of Silence

II. Agenda Adoption

III. Mayor's Communications

IV. Consent Agenda

A. Meeting Minutes Adoption

- November 13th Public Forum Meeting Minutes
- November 13th Town Council Meeting Minutes

All items on the Consent Agenda are considered routine, to be enacted by one motion with the adoption of the agenda and without discussion. If a member of the governing body requests discussion of an item, it will be removed from the Consent Agenda and considered separately.

V. Town Manager's Communications

- Consent Agenda Review
- Other Items

VI. Administrative Reports

- Administration
- Planning and Zoning
- Public Works and Water
- Sanitation
- Streets
- Finance
- Police

VII. Public Comment

Public comments will be heard during this period for any and all items.

VIII. Old Business

IX. New Business

A. Presentation of the Draft 2024/2025 Audit

- **Presenter:** A representative from Carter, P.C., the Town's auditing firm
- **Agenda Materials:** Documents will be distributed at the meeting

B. Conditional Zoning Request & Public Hearing

- **Presenter:** Savannah Parrish
- **See Agenda Materials on pages**
- **Suggested Motion:** Move to open/close the Public Hearing
- **Discussion**
- **Suggested Motion:** Move to approve/deny Conditional Zoning Request for 779 Foreman Siding Road

C. Bank Loan Approval

- **Presenter:** Savannah Parrish
- **See Agenda Materials on page**
- **Suggested Motion:** Move to approve/deny a loan in the amount of \$87,356.94 with First Bank to finance the purchase of a 2025 Kubota Tractor with attachments

D. Budget Amendment 5

- **Presenter:** Savannah Parrish
- **See Agenda Materials on page**
- **Suggested Motion:** Move to approve/deny Budget Amendment #5

E. Appointment of Members to Stone Bridge Advisory Committee

- **Presenter:** Savannah Parrish
- **Suggested Motion:** Move to appoint _____ to the Stone Bridge Advisory Committee

X. Public Comment

Public comments will be heard during this period for any and all items.

XI. Commissioner Communications

XII. Dates to Remember

**Montreat Board of Commissioners
Town Council Meeting
December 11, 2025**

- **Montreat Police Department Community Drop-In Gathering – Monday, December 15th, 2025, from 8:30 am – 10:00 am at The Huckleberry in Moore Center**
- **Board of Adjustment – Thursday, December 18th, 2025, at 5:00 p.m. (if needed) in Town Hall with Zoom options**
- **Christmas Holidays – Town Offices Closed – Thursday, December 25th, 2025, and Friday, December 26th, 2025**
- **New Year's Day – Town Offices Closed - Thursday, January 1st, 2026**
- **Landcare, Wednesday, January 7th, 2026, at 9:00 am in Town Hall with Zoom options**
- **January Town Council Meeting, Thursday, January 9th, 2026, at 6:00 pm in Town Hall with Zoom options. The Public Forum will begin at 5:30 pm.**
- **Tree Board, Tuesday, January 13th, 2026, at 9:00 am in Town Hall with Zoom options**
- **Planning & Zoning Commission Meeting, Thursday, January 15th, 2026, at 10:30 am in Town Hall with Zoom options**
- **Montreat Police Department Community Drop-In Gathering – Thursday, January 15th, 2026, at 10:00 am at the residence of Clay & Elizabeth Hamilton, 160 Maryland Place**
- **Martin Luther King, Jr. Day – Town Offices Closed – Monday, January 19th, 2026. Sanitation services will resume on Tuesday, January 20th at 8:00 am.**
- **Board of Adjustment – Thursday, January 22nd, 2026, at 5:00 pm in Town Hall with Zoom options (if needed)**

XIII. Adjournment

Board of Commissioners - Public Forum

November 13, 2025 – 5:30 p.m.
Meeting Minutes

Board of Commissioners in Attendance:

Commissioner Tom Widmer
Commissioner Jane Alexander
Mayor Tim Helms
Commissioner Mason Blake
Commissioner Grant Dasher

Board of Commissioners Absent:

Mayor Pro Tem Kitty Fouche

Town Staff in Attendance:

Savannah Parrish, Town Manager
Angie Murphy, Town Clerk (virtually)
Brandon Freeman, Town Attorney
Rachel Eddings, Finance Officer
Barry Creasman, Public Works Director
Jeff Eaton, Chief of Police

Members of the Public in Attendance:

Approximately 15 people

Call to Order

Mayor Tim Helms called the meeting of the Board of Commissioners public forum to order at 5:30 PM on Thursday, November 13, 2025. The meeting began with a moment of silence.

Agenda Adoption

Mayor Helms explained that the public forum was an opportunity for citizens to ask questions of the commissioners, with immediate answers when possible or follow-up responses when needed.

*Commissioner Jane Alexander moved to adopt the agenda as presented for the public forum.
Commissioner Grant Dasher seconded the motion. The motion carried unanimously 4/0.*

Public Comments

Letta Jean Taylor (386 Oklahoma Road) raised concerns about stop signs at the Appalachian and Oklahoma intersection. She mentioned that no traffic study had been conducted before installation and expressed safety concerns about stopping on Appalachian Way in icy conditions, particularly near a fire hydrant. Mrs. Taylor

questioned why stop signs were installed at this location but not at other intersections with speeding issues, such as Assembly Drive intersections.

Town Manager Savannah Parrish responded that the police department had been observing the new stop signs and would likely remove the sign at Appalachian Way and Oklahoma Road. Chief Jeff Eaton was taking one final step before removal, but the decision had essentially been made to remove the sign.

Jean Norris (192 Mississippi Road) expressed appreciation for the road patching work completed throughout town.

Wade Burns (779 Foreman Siding Road) informed the Board that he would be moving to South Carolina and would appear at the next month's meeting regarding conditional zoning on his Montreat home. He noted the seriousness of the matter, as his neighbor's request could result in the need to destroy his house. Mr. Burns encouraged Board members to conduct a site visit before the next meeting to better understand the situation, and he distributed information packets to commissioners.

Town Manager Savannah Parrish shared useful contact information for the Metropolitan Sewer District, providing both administrative (828-254-9646) and emergency (828-255-0061) phone numbers for residents experiencing sewer issues.

Mayor Helms confirmed that the gate lighting event would take place on December 5th, with Commissioner Tom Widmer adding that it would be a collaborative effort between the Montreat Adult Summer Club, the Town of Montreat, and the Mountain Retreat Association.

Peggy Scheu (146 Eastminster Terrace) inquired about efforts to address the bear problem in Montreat. She wanted to know what measures had already been implemented and their effectiveness, as well as how other communities have handled similar situations.

Mayor Helms explained that garbage management was the main issue, with some residents not properly securing their garbage or leaving garage doors open.

Town Manager Savannah Parrish elaborated that the bear feeding conversation originated from North Carolina Wildlife Resources recommendations. She noted that the Town of Highlands had implemented a similar wildlife feeding ban with good success in reducing bear encounters. Ms. Parrish explained that the goal would be to implement a wildlife feeding ban in 2026 along with bear-resistant trash containers to make bears uncomfortable in Montreat and reduce human-bear interactions.

Commissioner Maon Blake emphasized that this was a strong recommendation from wildlife officials, not just a casual suggestion, noting it was the only recommended measure not yet implemented when Montreat was qualified as a BearWise Town.

Commissioner Grant Dasher noted that four homes had been broken into by bears during the summer, with one break-in specifically to access bird seed. Some bears had to be euthanized as a result.

Bill Scheu (146 Eastminster Terrace) asked the Board to consider modifying any absolute prohibition on bird feeders to allow residents to use feeders during the day but bring them in at night. He noted that many residents work hard to respect the town's bear safety recommendations.

Mayor Helms acknowledged the challenge of creating rules that account for both responsible residents like Mr. Scheu and those who don't follow best practices.

Adjournment

Commissioner Tom Widmer moved to adjourn the meeting. Commissioner Mason Blake seconded the motion. The motion carried unanimously 4/0.

The public forum was adjourned until the regular meeting at 5:46 PM.

Tim Helms, Mayor

Angie Murphy, Town Clerk

Board of Commissioners – Town Council

November 13, 2025, 6:00 p.m.
Meeting Minutes

Board of Commissioners in Attendance:

Commissioner Tom Widmer
Commissioner Jane Alexander
Mayor Tim Helms
Commissioner Mason Blake
Commissioner Grant Dasher

Board of Commissioners Absent:

Mayor Pro Tem Kitty Fouche

Town Staff in Attendance:

Savannah Parrish, Town Manager
Angie Murphy, Town Clerk (virtually)
Brandon Freeman, Town Attorney
Rachel Eddings, Finance Officer
Barry Creasman, Public Works Director
Jeff Eaton, Chief of Police

Members of the Public in Attendance:

Approximately 15 people

Call to Order

Mayor Tim Helms called the regular meeting to order at 6:00 PM and led the Pledge of Allegiance.

Commissioner Mason Blake moved to adopt the agenda as presented. Commissioner Grant Dasher seconded the motion. The motion carried unanimously 4/0.

Mayor Helms wished everyone a Happy Thanksgiving and recognized Veterans Day, expressing gratitude to veterans for their service and sacrifices to preserve American liberties.

Consent Agenda

Town Manager Savannah Parrish presented the consent agenda, which included the October 9th public forum meeting minutes, October 9th town council meeting minutes, and October 10th special town council meeting minutes.

Public Comment

Letta Jean Taylor (386 Oklahoma Road) expressed concern about the proposed wildlife feeding ban ordinance. She noted that Montreat was the first certified community wildlife habitat in North Carolina, requiring properties to provide food, water, cover, and places for wildlife to raise young. Mrs. Taylor was concerned that prohibiting wildlife feeding would disqualify Montreat and individual properties from wildlife habitat certification. She also questioned whether having plants in yards that feed birds and animals would violate the proposed ordinance.

Buncombe County Tax Reappraisal Presentation

Eric Cregger, Buncombe County Tax Assessor, delivered a presentation on the upcoming 2026 tax reappraisal. He explained that the county assessment office is responsible for providing market values for all taxable property in the county, including real estate and personal property.

Mr. Cregger outlined that while personal property is reappraised annually, real estate in Buncombe County is reappraised every four years, with the next reappraisal set for January 1, 2026. The reappraisal was originally scheduled for 2025 but was delayed due to Hurricane Helene.

He explained that the county's current property values are set to 2021 market conditions, while current property assessments have fallen to approximately 60% of market value, well below the 85% threshold that triggers mandatory reappraisal under state law.

Mr. Cregger described how the county uses mass appraisal techniques to group similar properties geographically and apply the most relevant valuation approach: cost approach for unique properties, sales comparison for residential properties, and income approach for income-producing properties.

He emphasized that reappraisal is not a method to increase revenue, as the county is only responsible for determining property values, while governing bodies like the Town of Montreat and Buncombe County set the tax rates.

Property owners will receive reappraisal notices in February 2026 with instructions on how to appeal their valuations if they disagree. Mr. Cregger encouraged residents to check their property data on the county website (tax.buncombenc.gov) for accuracy before the reappraisal.

Commissioner Widmer asked about how the county determines market value. Mr. Cregger explained that it is based on comparable property sales in the area since 2021, with properties grouped by type and location.

Landcare - Flat Creek Crossing

Jean Norris provided an update on the Flat Creek Crossing project. She reported that work would soon begin on the site and shared funding details:

- \$34,065 from Pigeon River Fund (in hand)
- Approximately \$240,000 promised as reimbursement from Accessible Parks
- Approximately \$95,000 in donated funds

Ms. Norris noted they are potentially \$55,000 short of what's needed to complete all physical structures. She explained that Hurricane Helene had altered the creek, reducing available creek bank on both sides, which would require some design modifications. She also mentioned plans to eventually build an accessible bridge across the creek at an estimated cost of \$85,000-\$100,000.

Commissioner Widmer expressed appreciation that the project was finally moving forward after donors had been waiting to see progress.

SMART Program MOU

Town Manager Savannah Parrish presented a Memorandum of Understanding (MOU) between the Town of Montreat and North Carolina Department of Public Safety Emergency Management that would delegate debris removal from Flat Creek and its tributaries to state emergency management.

Ms. Parrish explained that this program would relieve the town's public works department from this manual labor and shift financial responsibility to the state. While she noted that other participating towns reported slow progress, she considered this a positive development for Montreat.

Mayor Helms mentioned that he and Public Works Director Barry Creasman had toured the creeks with state officials approximately five months ago, and the agreement was just now being presented, indicating the process would likely be lengthy.

Commissioner Dasher moved to approve the SMART program MOU as presented. Commissioner Alexander seconded the motion. The motion carried unanimously 4/0.

Budget Amendment Number 4

Town Manager Parrish presented Budget Amendment Number 4, which would appropriate FEMA reimbursement funds to partially repay North Carolina DEQ for a bridge loan provided after Hurricane Helene to repair the town's water system.

The amendment included FEMA reimbursements of \$4,982.90 for Welch Field damage, \$142,995 for debris removal, and \$6,002.50 for Providence Terrace culverts, with these funds being moved to Fund 29.

Commissioner Blake moved to approve Budget Amendment Number 4. Commissioner Widmer seconded the motion. The motion carried unanimously.

NC Debt Set Off Program

Town Manager Parrish presented a resolution to participate in the North Carolina Local Government Debt Set Off Program. She explained this would allow the town to send qualifying debts for collection (those over \$50 and less than three years old) rather than writing them off.

Mayor Helms noted that the state has more leverage in collecting these debts than the town does.

Commissioner Dasher moved to approve the NC Debt Set Off Program resolution as presented. Commissioner Alexander seconded the motion. The motion carried unanimously.

Wildlife Feeding Ban Ordinance

Town Manager Parrish introduced the proposed wildlife feeding ban ordinance, noting there were concerns both in the community and among commissioners. She suggested there was no need to rush a decision that evening, and that the Board could have a discussion and make edits to the ordinance.

She reiterated that the intention was to address a public safety concern by reducing bear encounters in town, following recommendations from NC Wildlife Resources. She noted that the Town of Highlands had success with a similar ban.

Commissioner Blake emphasized that this would be a one-year test program to address worsening bear issues each summer, with a focus on protecting children in Montreat. He noted it would provide an opportunity to collect data rather than relying solely on anecdotal evidence.

Commissioner Alexander, while expressing a personal desire to continue feeding birds, acknowledged the public safety concerns. She suggested implementing the ban from April 1, 2026, through March 2027, providing time to prepare information, educate the community, and inform summer visitors about the expectations.

Commissioner Widmer suggested postponing action to incorporate several modifications to the ordinance:

- Explicitly stating the test period within the ordinance
- Considering the timing in relation to the upcoming bear-resistant trash container requirement
- Revising language to exclude planted flowers for birds and hummingbirds from the prohibition

Mayor Helms raised the importance of assigning responsibility for ordinance enforcement.

Commissioner Widmer moved to postpone action on the wildlife feeding ban ordinance for future consideration. Commissioner Alexander seconded the motion. The motion carried unanimously.

Stone Bridge Advisory Committee Establishment

Commissioner Blake presented a proposal to establish a Stone Bridge Advisory Committee to make recommendations on the design and aesthetic improvements to town bridges. He explained that Nancy Thomas had spearheaded the initiative to restore Montreat's bridges to their historical appearance by cladding them in river stone, similar to the original bridges from Dr. Anderson's time.

He reported that donors had already committed \$50,000 for one bridge, with another \$30,000 expected soon, potentially funding the first two of six or more bridges planned for redesign. The committee would focus on aesthetic design recommendations, while the structural aspects would follow FEMA-approved designs.

Commissioner Blake noted that the Montreat Cottagers had agreed to help with fundraising through their 501(c)(3) status, though fundraising would not be the committee's primary responsibility.

Commissioner Blake moved to approve the establishment of a Stone Bridge Advisory Committee composed of seven members and up to two alternate members, subject to the clarifications set forth in his memo. Commissioner Alexander seconded the motion. The motion carried unanimously.

The committee members would be appointed at the December meeting.

Discussion of Bank Terms

Town Manager Parrish sought consensus from the Board regarding pursuing a bank loan for a Kubota tractor. She explained that the public works tractor was broken down and so old that parts were no longer available.

She presented a non-binding proposal from First Bank offering 100% financing at a fixed rate of 5.35% over 60 months. Ms. Parrish indicated she would return with a formal proposal and payment plan at the next meeting if the Board was supportive.

Mayor Helms and the commissioners expressed support for proceeding with obtaining a formal proposal.

Proclamation - Designation of November 12th as Arbor Day

Mayor Helms explained that the Tree Board had requested a proclamation designating November 12th as Arbor Day in Montreat, though the request had come at the last minute.

Commissioner Blake moved to designate November 12th as Arbor Day in Montreat. Commissioner Widmer seconded the motion. The motion carried unanimously.

Public Comment

There were no public comments.

Commissioner Communications

There were no commissioner communications.

Dates to Remember

Mayor Helms announced upcoming dates:

- Board of Adjustment: November 20, 5 PM
- Thanksgiving holiday closures: November 27-28
- Landcare: December 3, 9 AM
- Tree Board: December 9, 9 AM
- Town Council Meeting: December 11, 6 PM
- Board of Adjustment: December 18, 5 PM (if needed)
- Christmas holiday closures: December 25-26
- New Year's Day closure: January 1
- Gate Lighting: December 5, 5:15 PM

Adjournment

Commissioner Alexander moved to adjourn the meeting. Commissioner Widmer seconded the motion. The motion carried unanimously.

The meeting was adjourned at 7:07 pm.

Tim Helms, Mayor

Angie Murphy, Town Clerk



TOWN OF MONTREAT

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

ADMINISTRATIVE REPORTS: ADMINISTRATION

Town Administration report for the month of November 2025

Monthly Statistics	2024	2025
Public Meetings	2	6
Public Records Requests Processed	3	2
Water Bills Processed & Mailed	655	627
Water Bills Processed & Emailed	43	86
Leak Adjustments	0	2
Sunshine List Messages	9	14
Website Posts	9	14
Social Media Posts	12	14

Upcoming Events and Schedule Changes

0

Comments

N/A

Staff Communications

Happy Holidays from Town Office Staff!



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ADMINISTRATIVE REPORTS: STREETS

Streets Department report for the month of November 2025

Monthly Statistics	2024	2025
Public Trees Removed	8	0
Sand Applied to Roads (tons)	0	0
Ice Melt Applied to Roads (pounds)	0	4,200#
Road Closures	4	6

Comments

We had a small ice event during the early morning hours on Veterans Day.

Staff Communications:

0



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ADMINISTRATIVE REPORTS: WATER AND PUBLIC WORKS

Water and Public Works report for the month of November 2025

Monthly Statistics	2024	2025
Calls for Service	67	42
Water Leaks Repaired	2	1
New Water Lines Installed	400ft	0
Water Meter Replacements	2	0
Gallons of Water Produced	3,940,883	2,832,203
Hours Pumped (11 wells combined)	2,416	1,754
Water Samples Taken	1	1

Comments

We would like to take this time to wish everyone a Very Merry Christmas and a Happy New Year.



TOWN OF MONTREAT

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ADMINISTRATIVE REPORTS: SANITATION

Sanitation Department report for the month of November 2025

Monthly Statistics	2024	2025
Tons of Curbside Trash Collected	15.42	9.12 tons
Tons of Curbside Recycling Collected	0	2.20 tons
Unique Curbside Sanitation Stops	1700	1680
Special Pickup Stops	3	3
Bagged Leaf Pickup	669	448
Brush Pickup (cubic yards)	32 Loads	4 Loads
Hauling Fees	2108.1	4197.1
Tipping Fees	1330.65	1671.5
Dumpster Rental Fees	300.62	473.02
Convenience Center Usage-Trash	14.42	7.93 tons
Convenience Center Usage-Recycle	11.24	1.20 tons

Comments:

Merry Christmas and Happy New Year from the Sanitation Dept.



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ADMINISTRATIVE REPORTS: ZONING ADMINISTRATION

Zoning Administration report for the month of November 2025

Monthly Statistics	2024	2025
Approved Zoning Permits	1	1
Denied Zoning Permits	0	0
Pending Zoning Permits	2	6
Variance/Interpretation Granted	0	0
Special Use Permits Granted	0	1
Permit Extensions Granted	0	0
Notice of Violations	0	0

Comments

0



**TOWN OF
MONTREAT**
NORTH CAROLINA

FINANCIAL REPORT

November 2025 - MONTH 5 OF FISCAL YEAR 2025-2026

REVENUES

Fund	Fund #	Original		YTD Projected		YTD Projected		Difference
		Budget	Current Budget	Budget Amount	Budget Percentage	YTD Collected	YTD Actual Percentage	
GENERAL FUND	10	2,077,915.00	2,154,615.00	897,756.25	41.67%	810,056.17	37.60%	(87,700.08)
WATER FUND	30	424,900.00	501,511.13	208,962.97	41.67%	259,591.29	51.76%	50,628.32
TOTAL REVENUES GENERAL & WATER FUNDS		2,502,815.00	2,656,126.13	1,106,719.22	41.67%	1,069,647.46	40.27%	(37,071.76)

EXPENSES

Dept Name	Fund #	Original		YTD Projected		YTD Projected		Difference
		Budget	Current Budget	Budget Amount	Budget Percentage	YTD Exp	YTD Actual Percentage	
GOVERNING BODY	10	53,222.00	53,222.00	22,175.83	41.67%	24,770.94	46.54%	(2,595.11)
ADMINISTRATION	10	560,714.00	560,714.00	233,630.83	41.67%	255,473.46	45.56%	(21,842.63)
PUBLIC BUILDINGS	10	128,097.00	128,097.00	53,373.75	41.67%	37,751.71	29.47%	15,622.04
POLICE	10	539,521.00	539,521.00	224,800.42	41.67%	184,522.12	34.20%	40,278.30
BUILDING AND ZONING	10	99,900.00	99,900.00	41,625.00	41.67%	27,124.30	27.15%	14,500.70
PUBLIC WORKS	10	152,142.00	152,142.00	63,392.50	41.67%	57,986.58	38.11%	5,405.92
STREET	10	313,369.00	390,069.00	162,528.75	41.67%	199,747.85	51.21%	(37,219.10)
SANITATION	10	208,900.00	208,900.00	87,041.67	41.67%	92,835.91	44.44%	(5,794.24)
ENVIRON,CONS,REC	10	22,050.00	22,050.00	9,187.50	41.67%	9,442.60	42.82%	(255.10)
TOTAL EXPENSES GENERAL FUND		2,077,915.00	2,154,615.00	897,756.25	41.67%	889,655.47	41.29%	8,100.78
Dept Name	Fund #	Original		YTD Projected		YTD Projected		
WATER	30	424,900.00	501,511.13	208,962.97	41.67%	128,431.26	25.61%	80,531.71
TOTAL EXPENSES WATER FUND		424,900.00	501,511.13	208,962.97	41.67%	128,431.26	25.61%	80,531.71
TOTAL EXPENSES GENERAL & WATER FUNDS		\$2,656,126.13	\$1,106,719.22		41.67%	\$1,018,086.73	38.33%	\$88,632.49
GENERAL FUND INCOME/LOSS - YTD		(\$79,599.30)						
WATER FUND INCOME/LOSS - YTD		\$131,160.03						
NET INCOME - YTD 2026		\$51,560.73						

SPECIAL PROJECTS								
Project	Fund #		Budget	This Month Actual	Amount Spent To Date	Balance Remaining		% Spent
LANDCARE	26		121,487.08		2,619.60	118,867.48		2.16%
Hurricane Helene - Prof. Services	29		225,471.62	0.00	134,816.45	90,655.17		
Helene Materials	29		106,406.32	57.29	40,106.01	66,300.31		
Helene Consultants	29		65,000.00	8,965.00	43,906.33	21,093.67		
Helene - Professional SVCS - WithersRavenel Eng. Contract	29		111,000.00	5,334.00	5,334.00	105,666.00		
TOTAL SPECIAL PROJECTS			\$ 453,365.02	\$ 57.29	\$ 226,782.39	\$ 402,582.63		50.02%

Contracted - not available



**TOWN OF
MONTREAT**
NORTH CAROLINA

Tax Receipts

Date of Deposit	Jul-24	Jul-25	% +/-	Aug-24	Aug-25	% +/-	Sep-24	Sep-25	% +/-	Oct-24	Oct-25	% +/-	Nov-24	Nov-25	% +/-
AdVal/RMV (Includes Sp Assess&Ded Fees)	111.47	4,578.68	98%	8,739.19	8,009.73	-9%	97,986.59	105,919.13	7%	113,200.78	145,467.99	22%	67,804.72	73,074.90	7.21%
Sales	48,034.28	50,685.55	5%	51,571.85	50,411.97	-2%	53,793.50	52,427.24	-3%	50,660.91	48,606.34	-4%	50,244.97	49,794.92	-0.90%
Solid Waste (Quarterly)		189.97		191.63	1%								209.30	207.50	-0.87%
Utility Fran (Quarterly)							23,912.62	23,247.64	-3%						
Wine/Beer (Annual-May)								QE 6/30/25							
NOTES:															
AdVal Tax is received the month after the tax is collected															
RMV Tax is received two months after the tax is collected															
Sales Tax is received three months after the tax is collected															



TOWN OF MONTREAT AGENDA ITEM SUMMARY

SUBMITTER: *Jeff Eaton*

MEETING DATE: December 2, 2025

AGENDA SECTION: NEW BUSINESS

DEPARTMENT: Police

TITLE OF ITEM: Police Department Statistics for November.

SUMMARY:

The attached document is a summary of the calls for service the police department responded to in The month of November 2025. We are transitioning to a new format of collecting data and this could create some minor discrepancies in the numbers. There may be a handful of calls that don't get represented in this format until we work out issues with accurately pulling the data.

MONTREAT POLICE DEPARTMENT

MONTHLY STATISTICS - NOVEMBER 2025



# OF CALLS	CALL NATURE
26	ADMIN / MAINTENANCE
1	ALARM
0	ASSIST EOC
1	ASSIST MOTORIST
4	ASSIST OTHER AGENCY
3	COMMUNITY OUTREACH
8	CONTACT PUBLIC
2	DEBRIS BLOCKING ROADWAY
0	DIRECT TRAFFIC
0	DOMESTIC ANIMAL PROBLEM
0	DOMESTIC DISTURBANCE
1	FOLLOW UP INVESTIGATION
6	FOOT PATROL
3	IMPROPER PARKING
7	INVESTIGATE
2	LOUD NOISE
3	MOTOR VEHICLE CRASH
110	PROPERTY CHECK
3	SUSPICIOUS PERSON
4	SUSPICIOUS VEHICLE
6	TRAFFIC ENFORCEMENT
15	TRAFFIC STOP
0	WELFARE CHECK
0	WILDLIFE

205

TOTAL # OF CALLS

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 Board of Commissioners
December 11, 2025

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2. Site Plan
3. Reason for Request
4. Conditions Proposed by Applicant
5. Community Meeting
6. Supporting Documentation
7. Planning and Zoning Commission Recommendation and Consistency Statement
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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.)

Planning and Zoning Board 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 and posted a sign on the Subject Property on **October 13, 2025** (10 days ahead of **10/23/25 Planning & Zoning Commission hearing**)

Montreat's Town Clerk provided 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's Town Clerk posted two notices in the Asheville Citizen Times 10 - 25 days before the Planning and Zoning Commission hearing.

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

Board of Commissioners Public Notice

Town staff mailed Public Notice to properties within 250' of the site and posted a sign on the Subject Property on **December 1, 2025** (10 days ahead of **12/11/2025 Board of Commissioners' hearing**)

Montreat's Town Clerk provided Public Notice at least one week ahead of the **12/11/2025 Board of Commissioners' 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's Town Clerk posted two notices in the Black Mountain News 10 - 25 days before the Board of Commissioners' hearing.

Montreat Board of Commissioners, Public Hearing: **12/11/2025**

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.

Conditional Zoning

Planning and Zoning Commission Meeting

On October 23, 2025, the Planning and Zoning Commission recommended approval by a vote of 6-0. The Recommendation and Consistency Statement is attached to this staff report.

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.

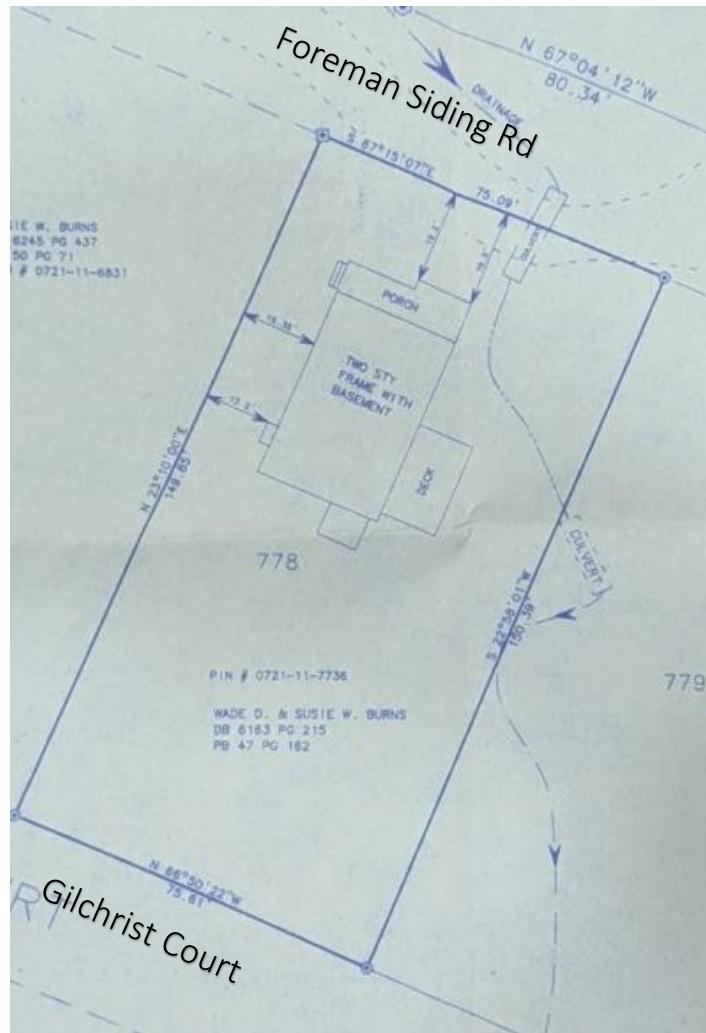


Figure 2: Site Plan

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 ETJ are part of Buncombe County's tax base and not Montreat's tax base.

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 governed 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@WILMINGE.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: NC ZIP: 28757
PIN#: _____ TOTAL ACREAGE: 1/4 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 OR NEARLY TWO YEARS SINCE 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

Alexis Baker

9/23/25
Date

Zoning Administrator Signature

Alexis Baker

Printed Name of Zoning Administrator

Fee: 200 -

PAID

7/17/25

Paid: Yes

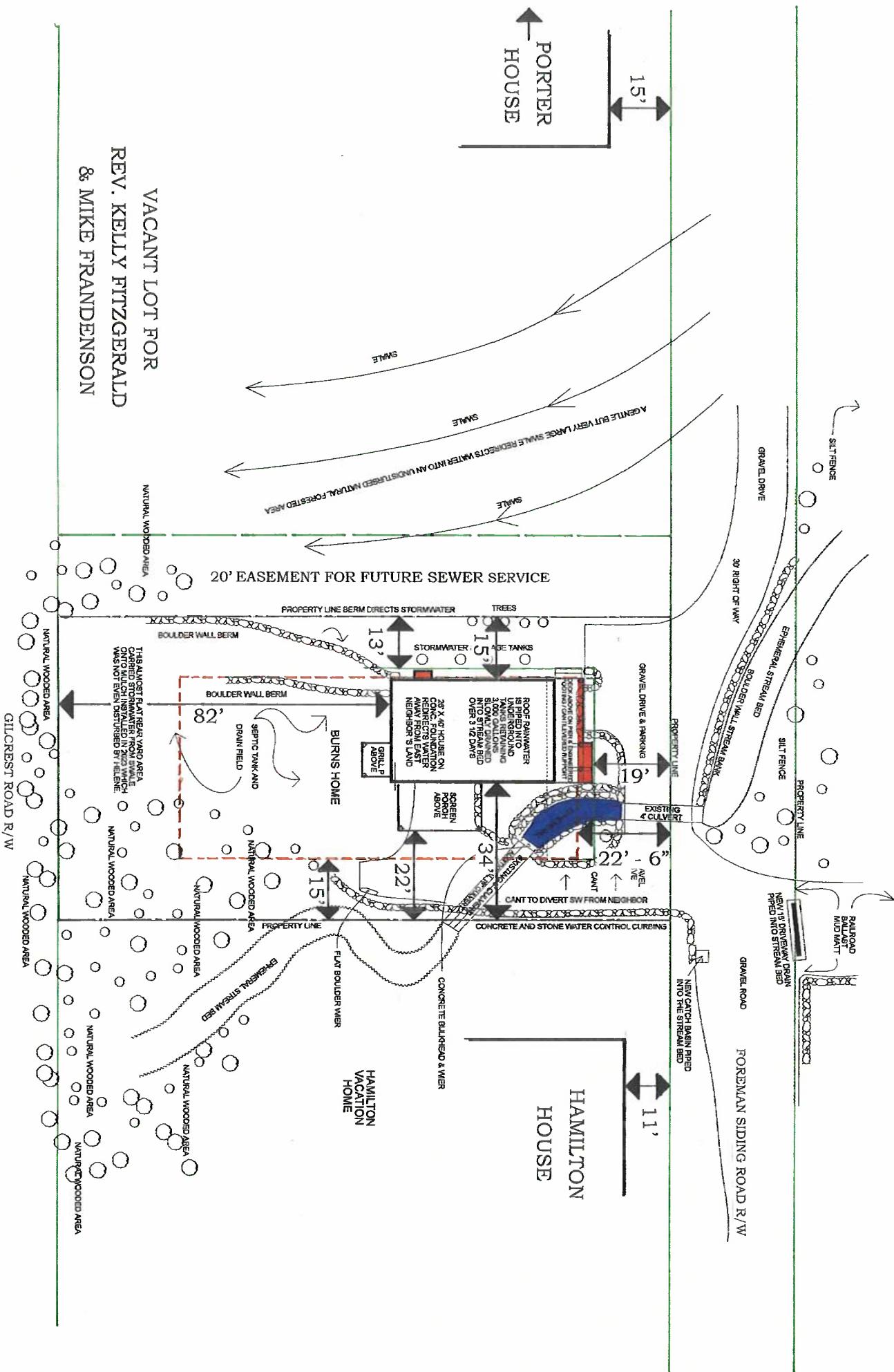
No

Payment Method: Check

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

Scheduled Board of Commissioner Meeting Date: _____

ATTACHMENT 2



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 in 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 in 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.

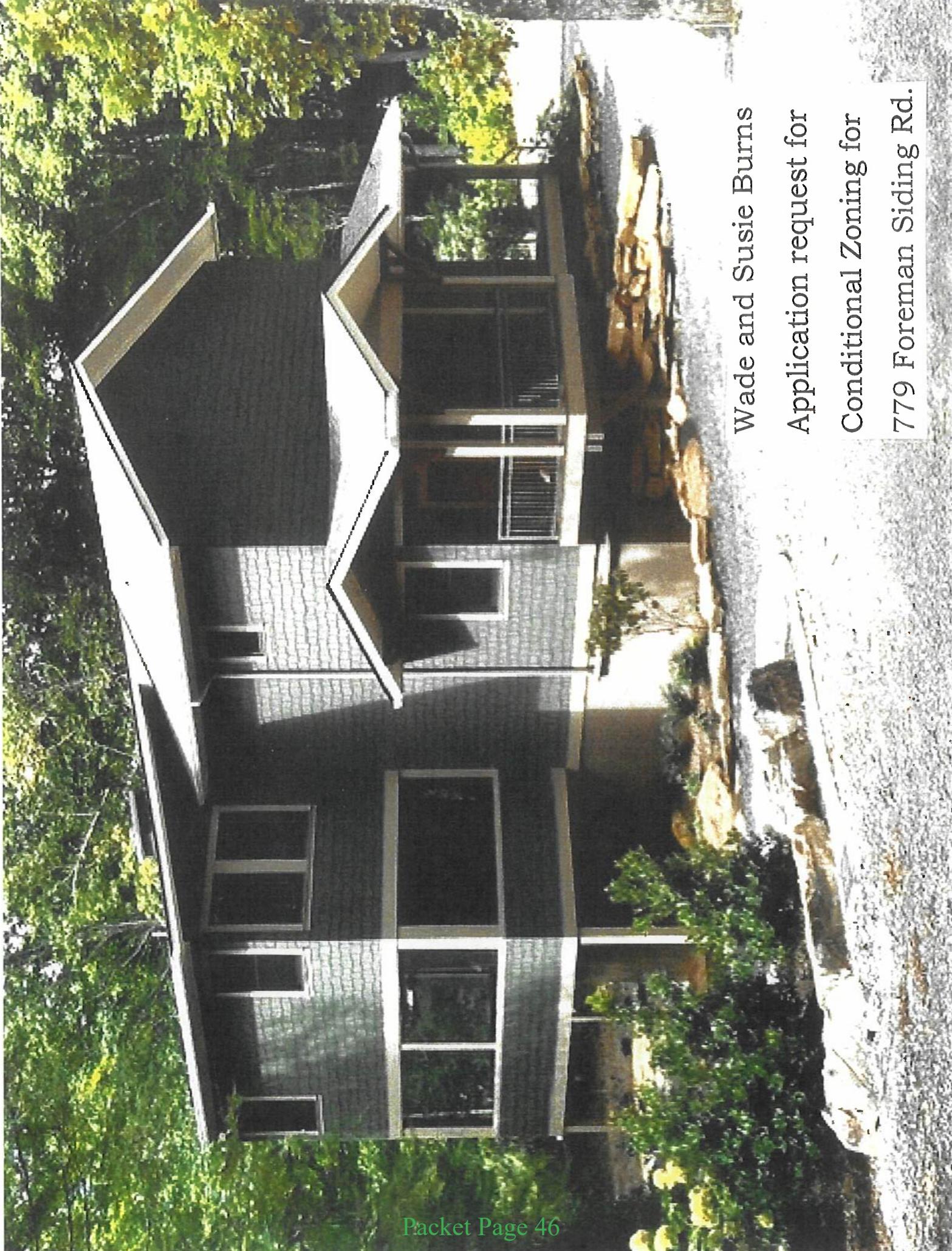
RSVP as you can.

A handwritten signature in blue ink, appearing to read "Wade DuBose Burns".

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 $\frac{1}{4}$ 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 $\frac{1}{4}$ 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 1st 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.**

TO: [REDACTED]

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

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	
<u>Determination:</u>	<u>Ephemeral</u> <u>Stream</u> <u>Determination</u>	

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 Wojski; DWR – 401 & Buffer Permitting Unit; 1617 Mail Service Center; Raleigh, NC 27699-1617. If sending via delivery service (UPS, FedEx, etc.): Paul Wojski; 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

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Wade Burns
June 28, 2021
Page 2 of 2

If you have questions regarding this determination, please free to contact me at 828-296-4684 or
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

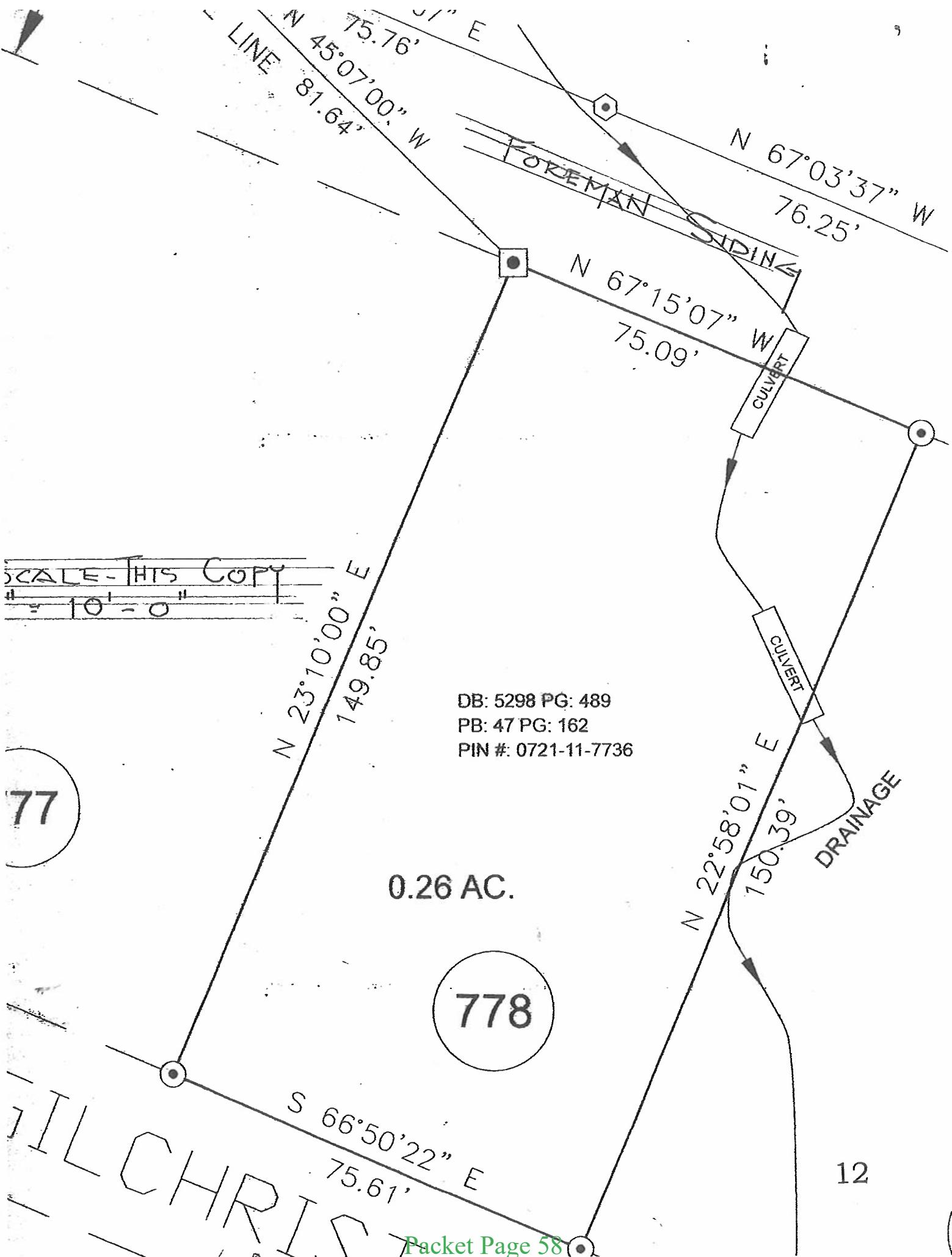
Enclosures: Maps

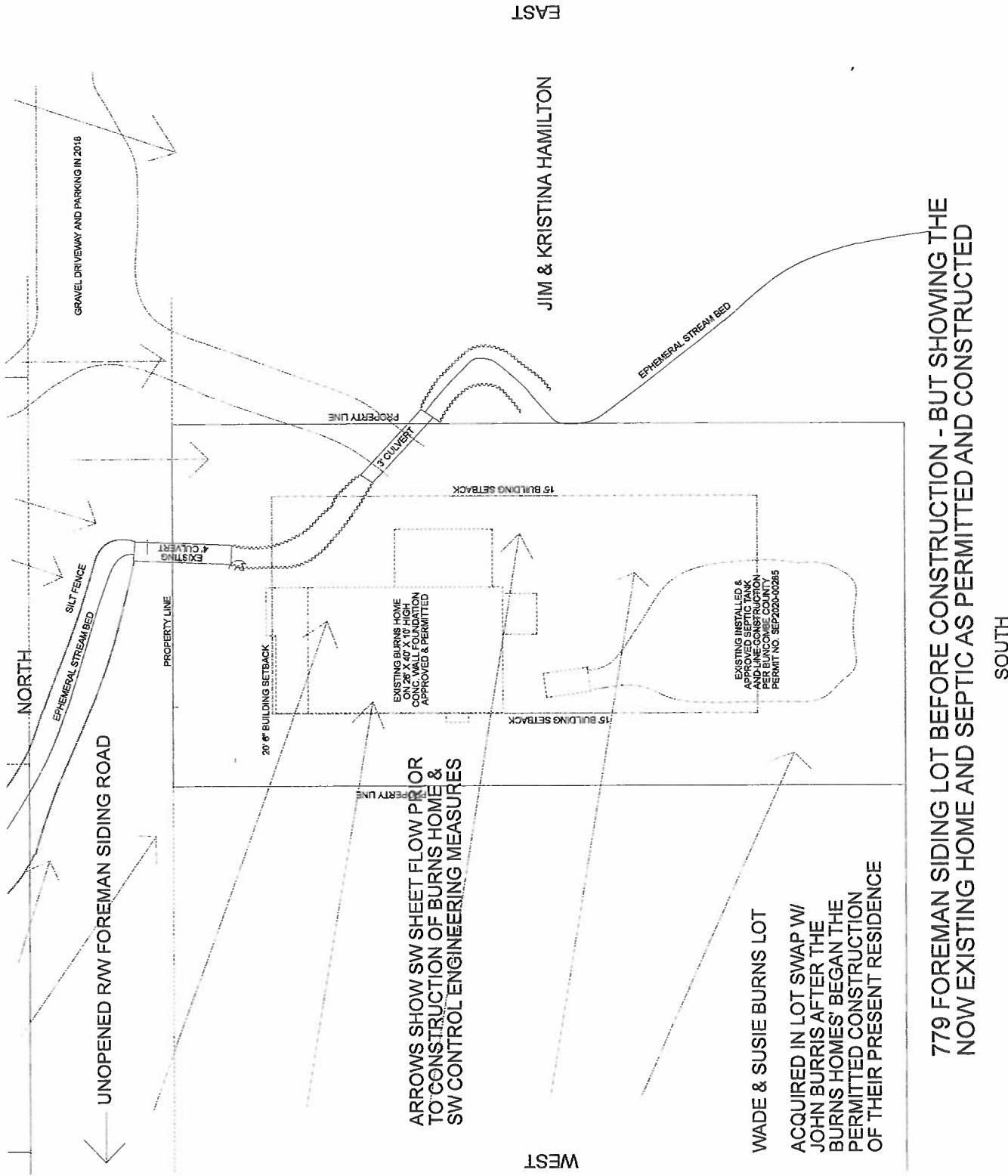
cc: Scott Adams, Town of Montreat

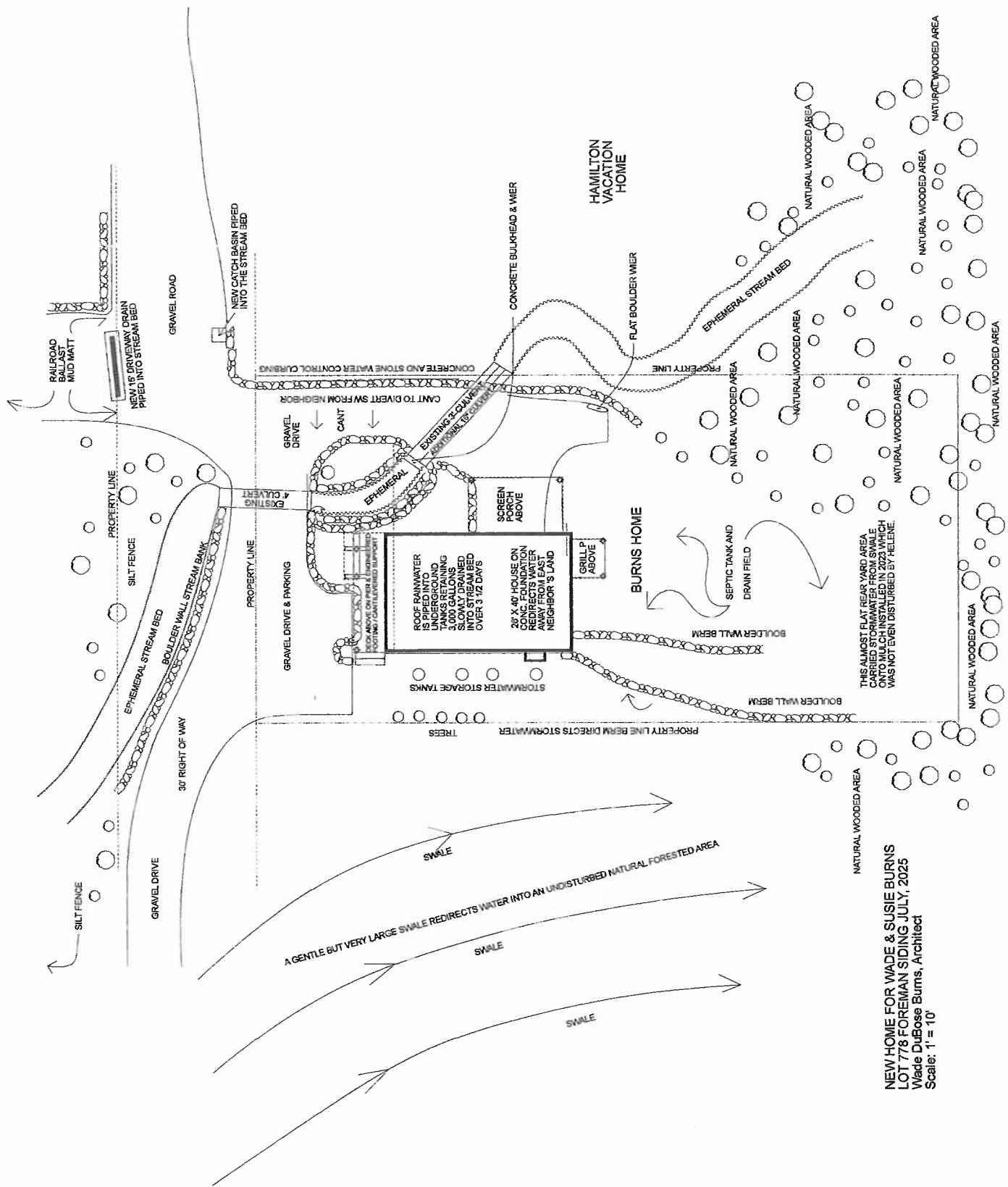
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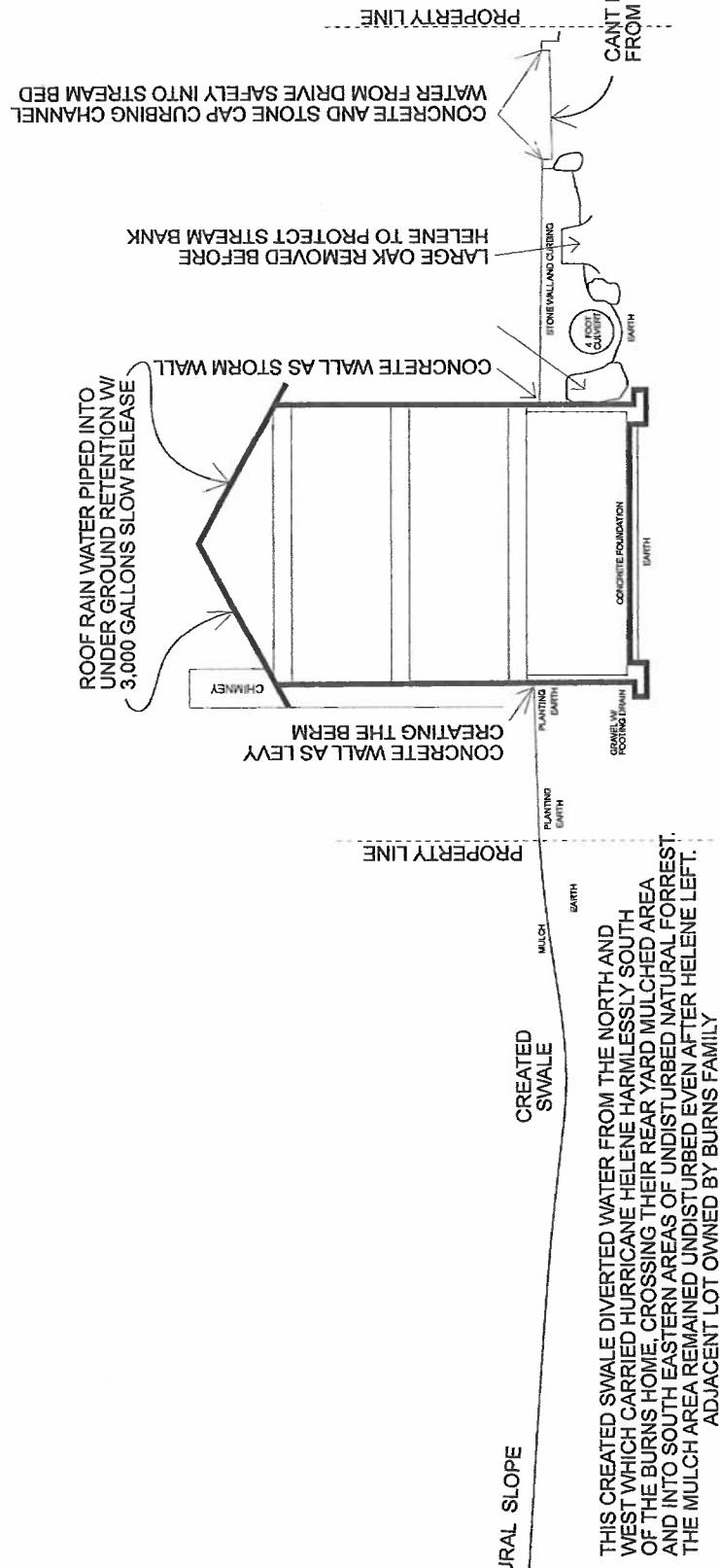


North Carolina Department of Environmental Quality | Division of Water Resources
Asheville Regional Office | 2090 U.S. Highway 70 | Swannanoa, North Carolina 28778
828.296.4900
Packet Page 57









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 filed 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: WDBMONTREATWIZ@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: NC 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 OR NEARLY TWO YEARS AND WITH RIGHTS TO RETIRE THERE, SELL OUR HOME
OR BORROW MONEY 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, WARE D. TURNER, 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

WASP D. BURNS
Printed Name of Applicant

OFFICE USE ONLY

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".

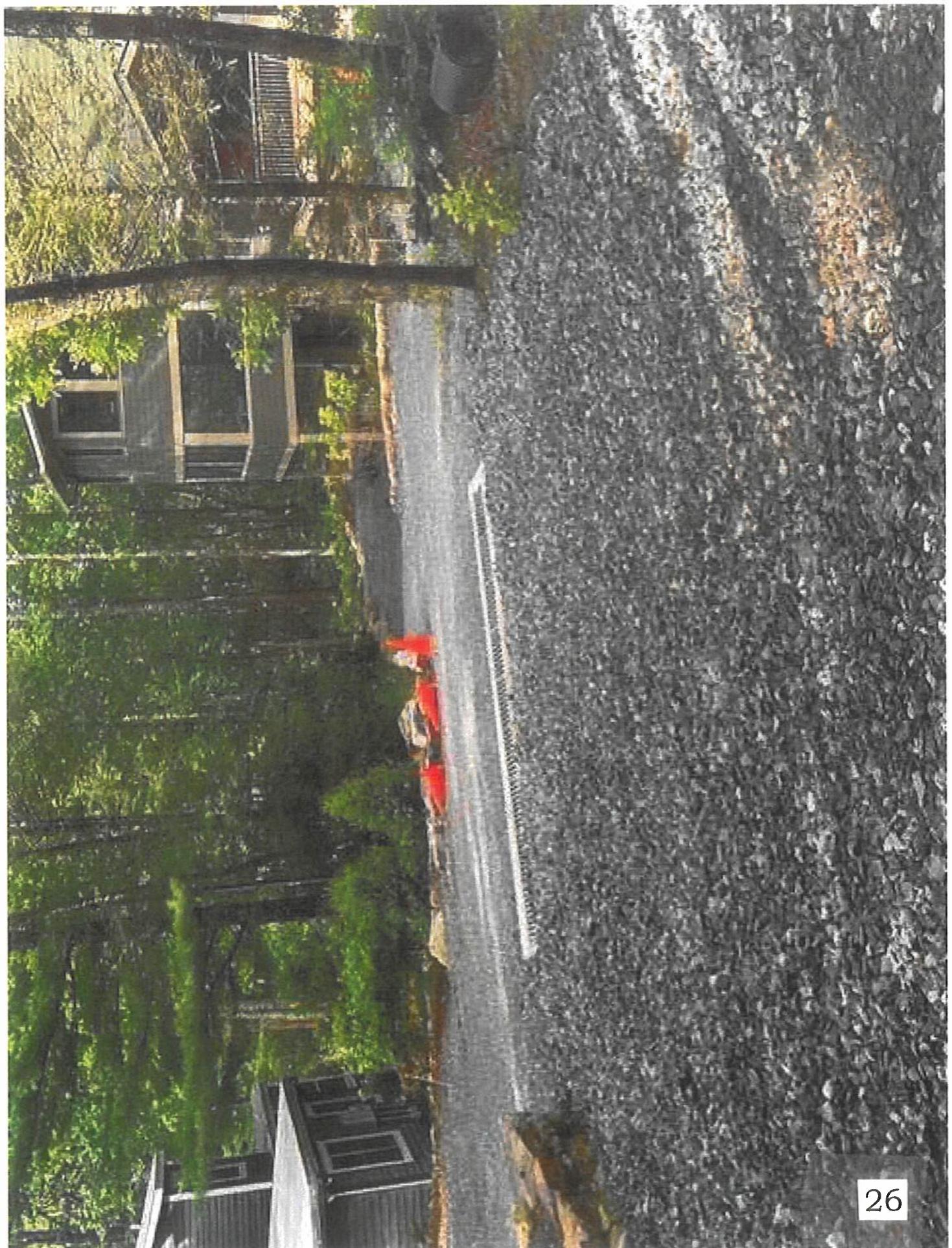
Wade DuBose Burns cell 828 231 0650

wdbmountainliving@gmail.com



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PROTECTING STREAM BED PRE CONSTRUCTION

OPEN STREAM BED

BURNS LOT
HAMILTON LOT

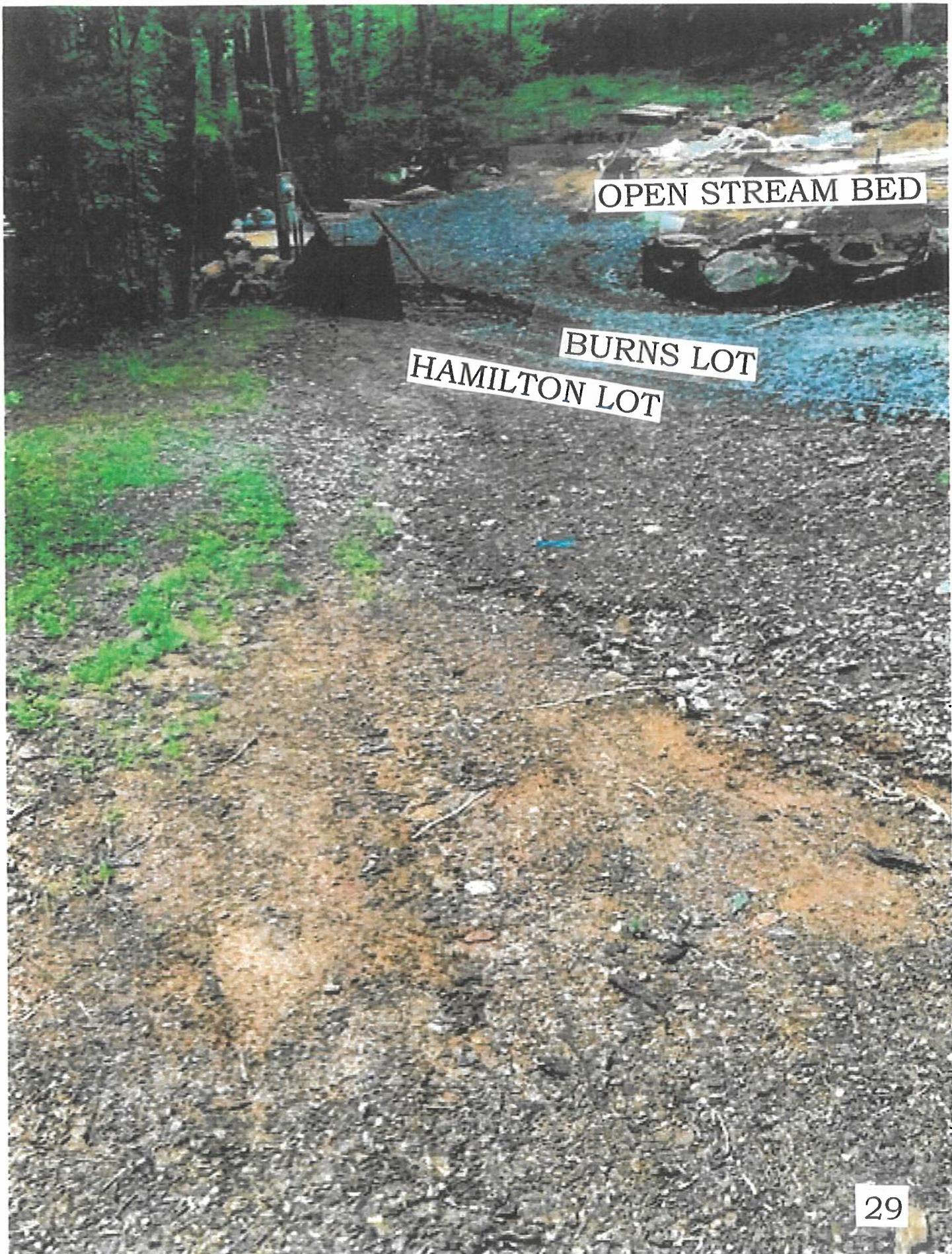
NORTH, EAST AND WEST LOTS ALL FLOWING
UNRESTRICTED INTO BURNS OPEN STEAM BED

UNADDRESSED MEANS MAJOR HELENE EROSION

E-WD A2



28



► 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

Education

Virginia Polytechnic Institute (Virginia Tech)

College of Architecture and Urban Studies —

5-year graduate



President Jimmy Carter, Rosalynn Carter, Wade Burns

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
- Associated Press
- Canadian Brdgstg. Corp.
- CNN
- TBS
- Atlanta public officials
- Russian Television
- National Public Radio
- President Jimmy Carter
- Newsweek
- American Public Radio
- 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.

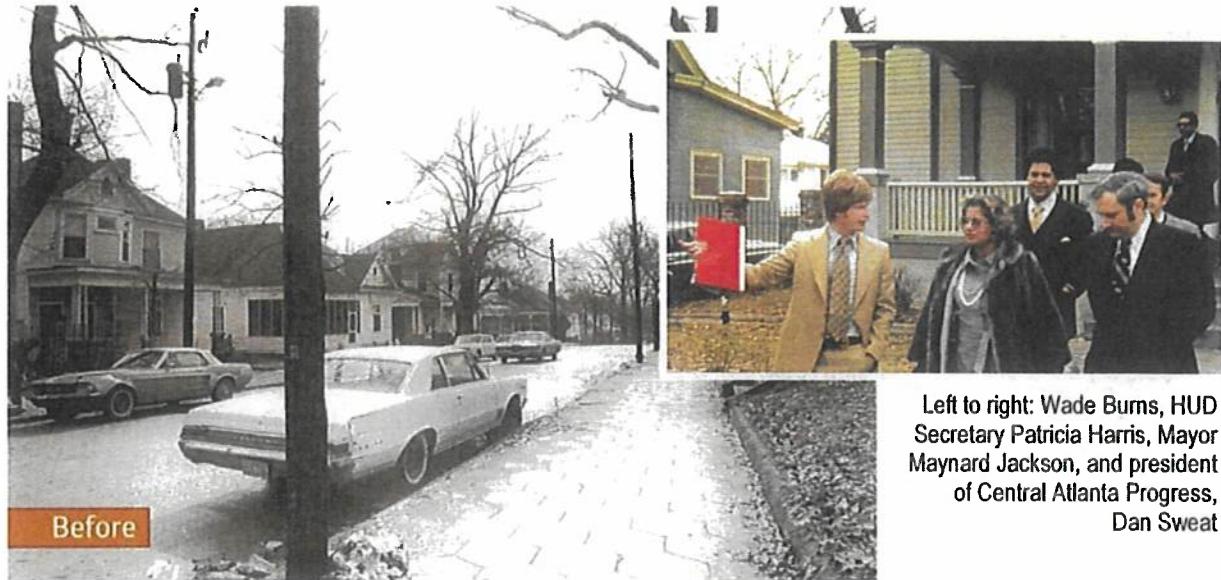
Appendix D: Design Portfolio (continued) – Wade DuBose Burns

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.

Peeples 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.

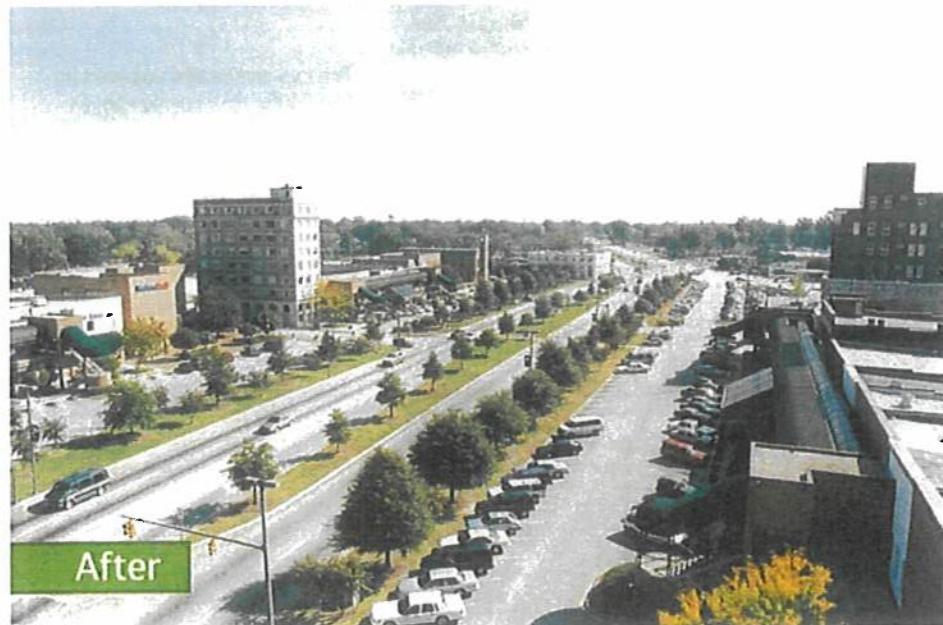
The U.S. Dept. of HUD recognized the City as the best town revitalization in the Southeastern U.S.



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.

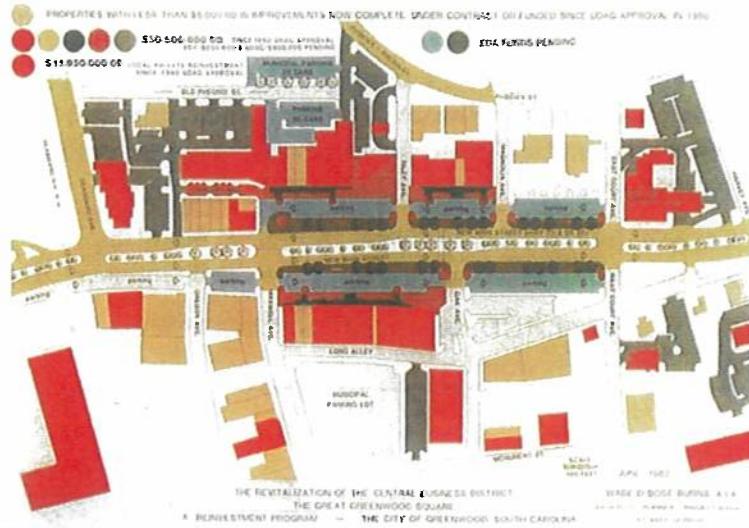
Over the four years of the project, the community invested \$31 million. By 1996, the total had reached nearly \$100 million.

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

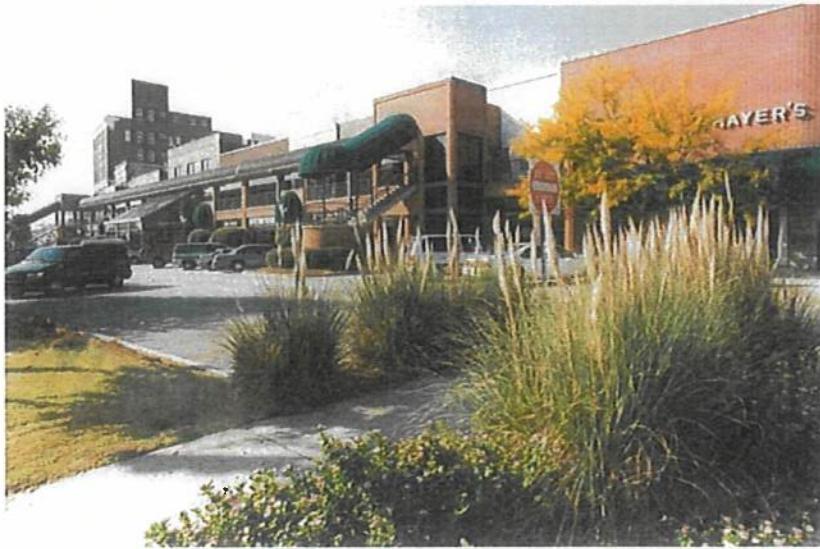
Appendix D: Design Portfolio (continued) – Wade DuBose Burns

Greenwood, SC — City Center Redesign 1979–1983 (continued)

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



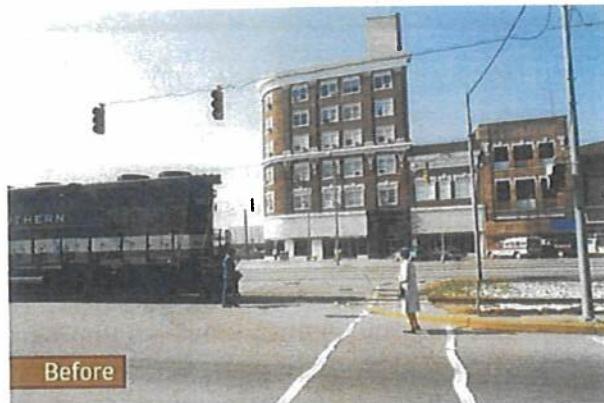
The two-level arcade opened up 250,000 sq. ft. of usable space.



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.

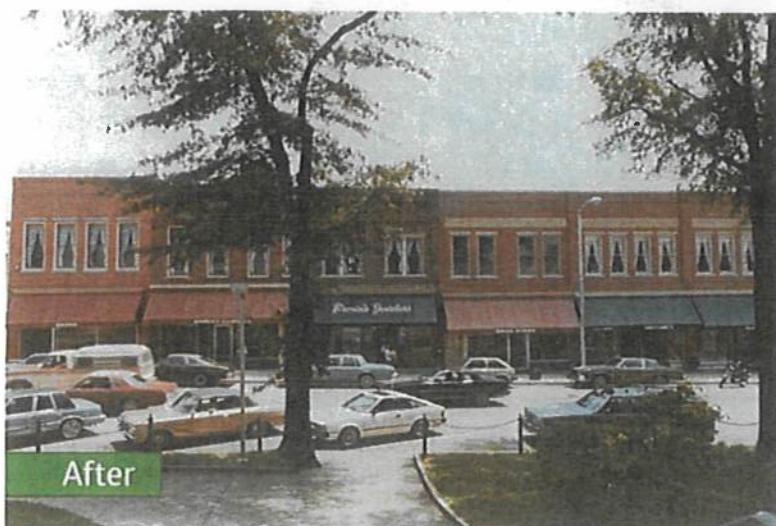
Included four city blocks of facades surrounding the courthouse, public parking and street improvements. Burns initiated a successful amendment to the SC Municipal Improvement Act that facilitated property owners' participation.

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

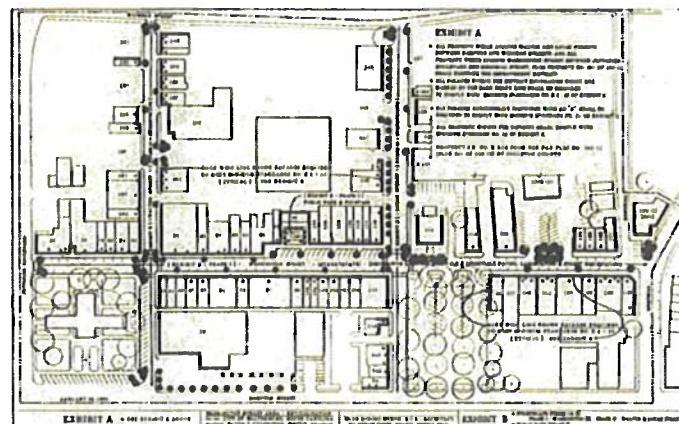
Walterboro, SC — Downtown Revitalization 1984 – 1985

Elton Culpepper, was the Mayor.

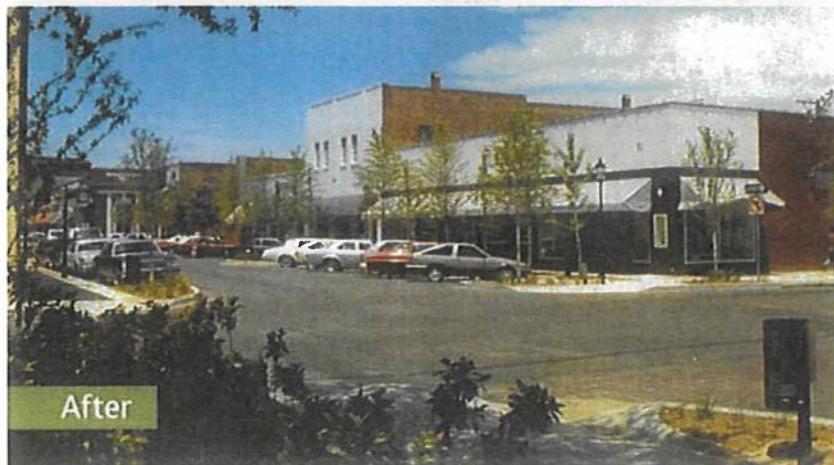
Wade Burns was Architect and Project Manager. The design was 100% implemented.

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



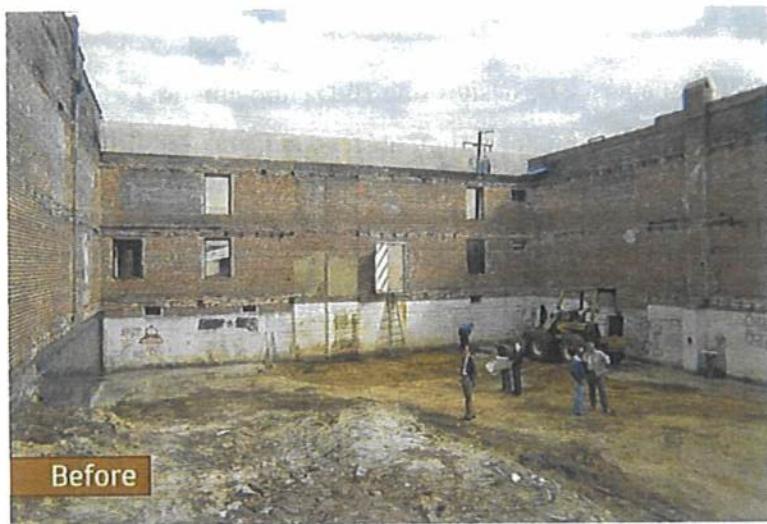
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Appendix D: Design Portfolio (continued) – Wade DuBose Burns

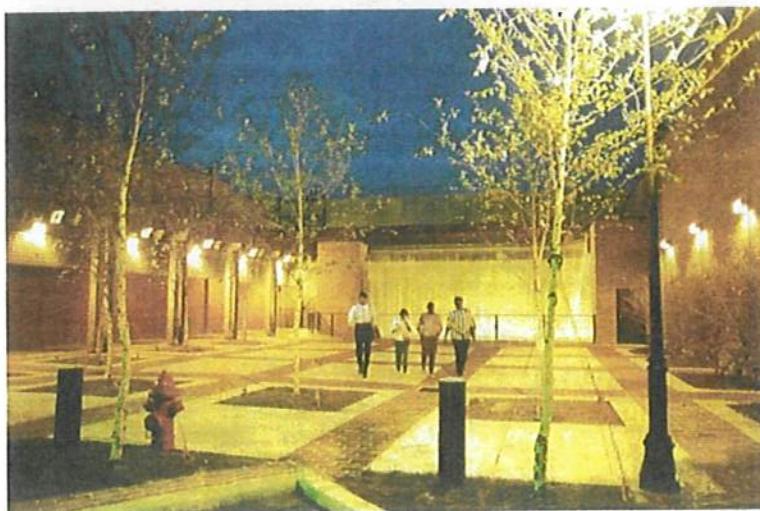
Walterboro, SC — Downtown Revitalization 1984 – 1985 (continued)



At the center of town was the gaping hulk of the old, burned-out dime store. 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. Not withstanding a significant personal investment, these efforts have been unsuccessful and there remains no such development south of the City.

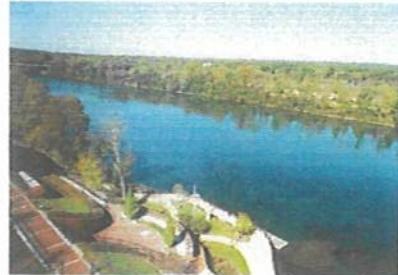
1988 - 1990 Augusta, Georgia



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

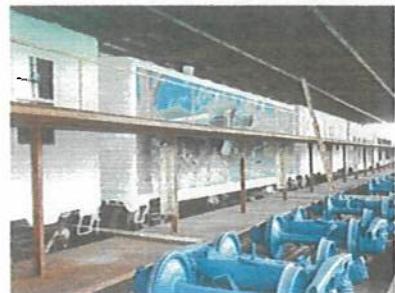
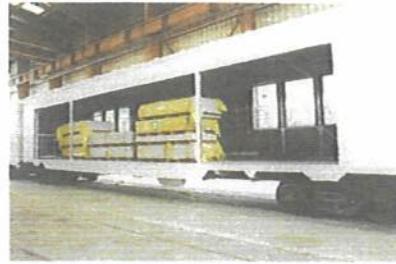
1999 - President, Atlanta West End Rotary Club, Jimmy Carter Center
1999 - Chair, City of Atlanta Vending review board

Past Service:

Chair, Leadership Atlanta Alumni
President, Outstanding Atlanta
Campaign Chair, 102nd 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



TOWN OF MONTREAT

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

Recommendation¹ of the Town of Montreat Planning and Zoning Commission

SUBJECT: Conditional Zoning – 779 Foreman Siding Rd (PIN: 072111773600000)

REQUEST: Property owners, Wade and Susie Burns, 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.

RECOMMENDATION: The Planning and Zoning Commission recommended approval by unanimous vote.

FINDINGS AND REASONS CONCERNING PLAN CONSISTENCY: The Commission found that the project was consistent with the Town of Montreat's Comprehensive Plan (2023) in that it aligned with the sections concerning development in the ETJ, including:

"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." (Montreat's Comprehensive Plan (2023) at Page 22).

Case History

Staff Coordinator: Alexis Baker, AICP, Interim Zoning Administrator

Heard by Planning and Zoning Commission: October 23, 2025

Vote: 6-0

Motion: Eleanor James; Second: Mike Broussard

In Favor: Gayle Sawyer, Eleanor James, Julie Schell, Allen Crawford, Clay Hamilton, Mike Broussard;

Opposed: None.

This document is a true and accurate statement of the findings and recommendations of the Montreat Planning and Zoning Commission.

John Schell _____ Date: 11-13-2025
Julie Schell, Planning and Zoning Commission Chair

¹ This recommendation is being made pursuant to NCGS 160A-383 requiring the planning board to provide a written recommendation to the governing board that addresses plan consistency and other matters as deemed appropriate by the planning board.

ATTACHMENT 8

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 feet 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-feet 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. Any 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
COUNTY OF BUNCOMBE

JAMES HAMILTON and KRISTINA
HAMILTON,

Petitioners,

vs.

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

Respondents.

JAMES HAMILTON and KRISTINA
HAMILTON,

Petitioners,

vs.

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

Respondents.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

22 CvS 3602

FILED

DATE: June 17, 2025
TIME: 3:28:44 PM
BUNCOMBE COUNTY
CLERK OF SUPERIOR COURT
BY: M. Stone

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 1SA 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 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 ^{6/13/2025 9:52:26 AM} are taxed against the Respondents.

THS the __ of June, 2025.

6/13/2025



The Honorable Marvin P. Pope
Superior Court Judge Presiding



G. Nicholas Herman	herman@broughlawfirm.com
Robert E. Hornik, Jr.	hornik@broughlawfirm.com
T.C. Morphis, Jr.	morphis@broughlawfirm.com
Alan A. Andrews	andrews@broughlawfirm.com
Albert M. Benshoff	benshoff@broughlawfirm.com
Kevin R. Hornik	khornik@broughlawfirm.com
Brady N. Herman	bherman@broughlawfirm.com
Lydia E. Lavelle	lavelle@broughlawfirm.com
Jenna Yovanovich	yovanovich@broughlawfirm.com

October 21, 2025

Via Email to zoning@townofmontreat.org

Town of Montreat Planning and Zoning Commission
C/o Mr. Rich Caplan, Zoning Administrator

Re: 779 Foreman Siding Road - Conditional Zoning Application

Dear Members of the Planning and Zoning Commission,

I represent Wade and Susie Burns and am writing you in support of their application for a conditional zoning approval for their property located at 779 Foreman Siding Road in Montreat. I have been working with the Burnses for several years now on appeals stemming from decisions of the Montreat Board of Adjustment, which were described in the September 8, 2025 memorandum submitted by Mr. James and Ms. Kristina Hamilton in opposition to the requested conditional zoning.

As you may already know, Mr. Burns is a local architect who served for many years on the Montreat Planning and Zoning Commission, and Ms. Burns has worked for years with the Montreat Conference Center. Mr. Hamilton is a powerful Washington, D.C. lawyer¹ and a part-time Montreat resident. While his memorandum tries to make this issue about stormwater and environmental protection, I believe the main reason he opposes the Burnses' requested rezoning is because he did not want the lot next to his summer home developed and because the Burnses would not acquiesce to his demands regarding the construction of their home.²

The Design of Burns Home

With this rezoning application, the Planning Commission and Board of Commissioners are being asked to consider the unusual request to rezone property to approve a home that has already been built.

Prior to building his home, Mr. Burns obtained all needed permits, including a June 28, 2021 Stream Identification letter from Mr. Andrew Moore with the NC Department of

¹ See: [https://en.wikipedia.org/wiki/James_Hamilton_\(attorney\)](https://en.wikipedia.org/wiki/James_Hamilton_(attorney)) (Among other things, "During the 2000s, [Mr. Hamilton] vetted vice presidential candidates for presidential campaigns including the Al Gore 2000 campaign, the John Kerry 2004 campaign, the Barack Obama 2008 campaign and the Hillary Clinton 2016 campaign.").

² See, enclosed Affidavit of Wade Burns, which has been filed with the Buncombe County Superior Court.

Environmental Quality (enclosed). Mr. Moore's letter determined that the drainage on the Burns' property was an ephemeral stream, and throughout this entire process no one has challenged the accuracy of his methodology or determination. The State of North Carolina defines an "ephemeral stream" as "a feature that carries only stormwater in direct response to precipitation with water flowing only during and shortly after precipitation events."³

The Burnses completed their home in the late summer of 2023. As part of settlement discussions (which were ultimately not successful), the Burnses provided a detailed description of their stormwater system. They provided this information on September 20, 2024, just four days before Hurricane Helene struck. That description has been enclosed. As explained in the statement, the Burnses have added additional drainage pipes (page 2); installed boulders, a weir, curbing, and a catch basin (page 2); and installed two 1,500-gallon stormwater retention tanks that capture all rainwater from the Burnses' roof (page 3).

As you know, Hurricane Helene was the worst storm to hit the region in living memory. Not only did the Burns and Hamilton houses survive, but the Burnses' stormwater system performed exactly as designed under the worst conditions imaginable. Although the Hamiltons' memorandum spends considerable time discussing legal interpretations, it is notably silent as to how the Burnses' stormwater system has actually performed. They have yet to produce evidence that the Burnses house or its stormwater system have contributed to erosion of the Hamilton property or to a degradation of water quality in Flat Creek.⁴

The Superior Court Ruling

Respectfully, the Hamiltons' memorandum also misinterprets the Superior Court's ruling. Before delving into this issue, however it is worth reminding the Commission that the Montreat Board of Adjustment, over multiple hearings, repeatedly sided with the Montreat Town staff and the Burnses. The court Order repeatedly referenced by the Hamiltons was issued by a single Superior Court Judge sitting in Asheville, and that Order has been appealed to the North Carolina Court of Appeals. The Order is enclosed for your reference.

The Hamiltons contend that, "The North Carolina Superior Court found that the 30 feet buffer applies to the stream on the Burns property." And for that reason, they argue that the Burnses' "house and gravel driveway are in violation of the Montreat Stormwater Ordinance."⁵ What the Court actually held is that there is a perennial stream⁶ shown

³ 15A NCAC 2B .0610(14)

⁴ Ironically, the construction of the Burnses' home may have helped save the Hamilton house because trees were removed during construction that would have likely fallen on the Hamiltons' home during Hurricane Helene.

⁵ Memorandum, page 4.

⁶ 15A NCAC 2B .0610(31) (A "perennial stream" is "a well-defined channel that contains water year round during a year of normal rainfall with the aquatic bed located below the perched or seasonal high water table for most of the year. Groundwater is the primary source of water for a perennial stream, but it also carries stormwater runoff.")

flowing over the Burnses' property on a USGS topographic map, and under Section 305.1 of the Montreat Stormwater Ordinance perennial streams require a thirty-foot riparian buffer.⁷ Relying on the 2021 Stream Identification Letter, however, the Montreat town staff determined that the drainage on the Burnses' property is ephemeral,⁸ and for that reason no buffer was required. The Board of Adjustment agreed with the Town staff's interpretation as to the stream type, and the Court did not dispute this determination either. Instead, the Court held that Board of Adjustment had an obligation to determine whether a thirty-foot buffer should nonetheless be applied to the ephemeral stream.⁹ The Burnses have appealed this decision to the Court of Appeals. And contrary to the Hamiltons' assertion, their home was not built in violation of the Montreat Stormwater Ordinance.

The Requested Conditional Zoning

Throughout this multi-year ordeal, Mr. Hamilton has repeatedly sought to paint Mr. Burns as a rule breaker, and their Memorandum essentially argues that this behavior should not be rewarded with a conditional zoning of the property. As stated above, however, the Burnses have always followed the rules, and when put to the test of Hurricane Helene, their home and its stormwater system performed as intended. Approving their home through a conditional zoning amendment is exactly what is meant by the phrase "When the public necessity, convenience, general welfare, or good zoning practices justify" a rezoning.¹⁰

For these reasons, I respectfully ask that you recommend approval of the requested rezoning.

Sincerely,

THE BROUGH LAW FIRM, PLLC

/s/ T.C. Morphis, Jr.

Enclosures

CC: Mr. Wade Burns (via email)
Ms. Susie Burns (via email)
Mr. Brandon Freeman, Town Attorney (via email)

⁷ Order, page 3, Findings of Fact 8.

⁸ Order, page 3, Findings of Facts 11.

⁹ Order, page 7-8, Conclusions of Law 11.c. and 11.d.

¹⁰ Montreat Zoning Ordinance Sec. 309.

ROY COOPER
Governor

JOHN NICHOLSON
Interim Secretary

S. DANIEL SMITH
Director



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

June 28, 2021

Wade Burns
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	
Determination:	<u>Ephemeral</u> Stream Determination	

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

Packet Page 109

Wade Burns
June 28, 2021
Page 2 of 2

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

Sincerely,

DocuSigned by:

Andrew Moore

SC147F587AE9400...

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

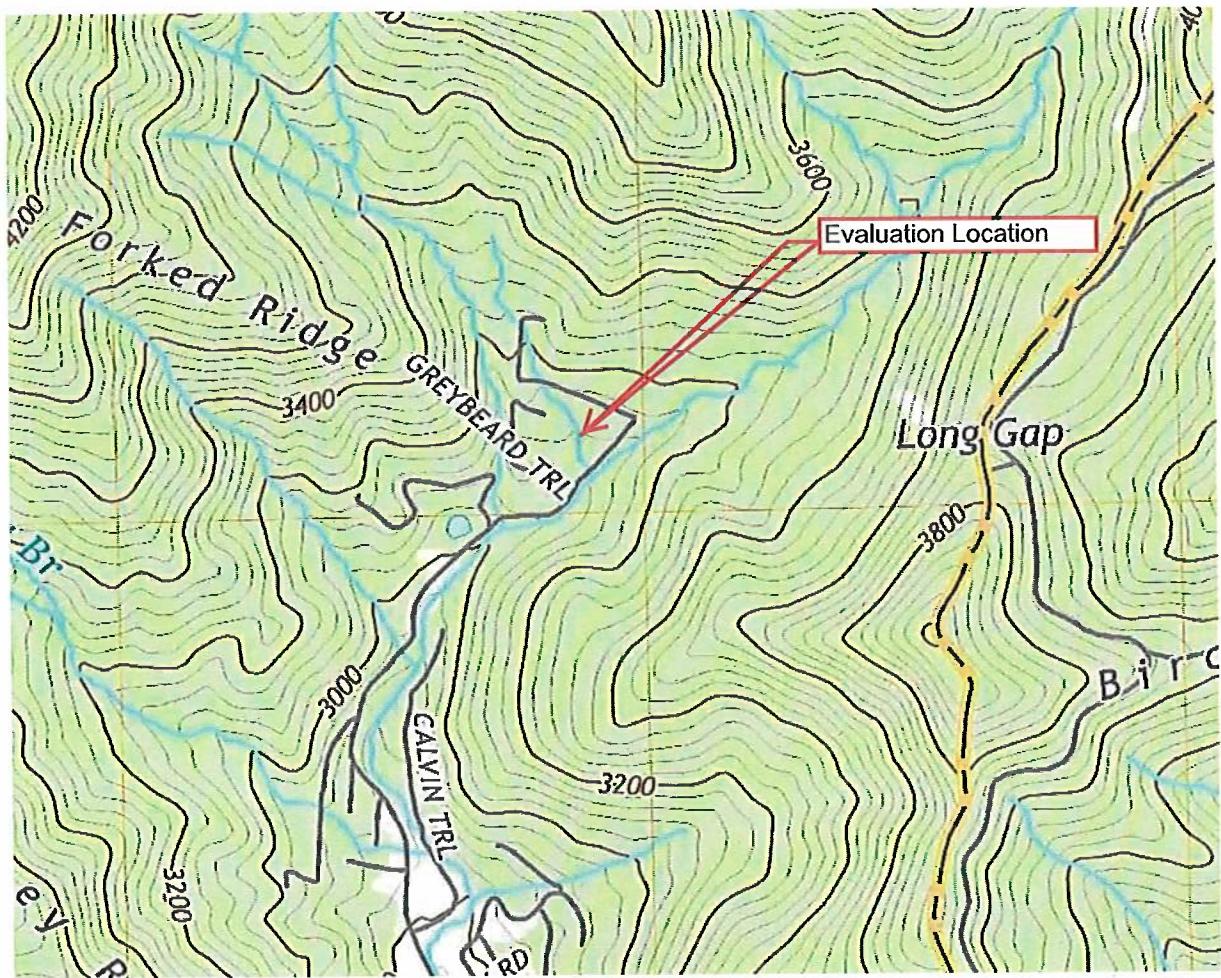
Enclosures: Maps

cc: Scott Adams, Town of Montreat



North Carolina Department of Environmental Quality | Division of Water Resources
Asheville Regional Office | 2090 U.S. Highway 70 | Swannanoa, North Carolina 28778
828.296.4100

Packet Page 110



From: United States Geological Survey. Montreat Quadrangle. 1:24,000. 7.5 Minute Series, Va: United States Department of the Interior, USGS, 2019.

Buncombe County



NORTH CAROLINA
BUNCOMBE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
22 CVS 3602

JAMES HAMILTON and KRISTINA)
HAMILTON,)
Petitioners,)
v.)
TOWN OF MONTREAT, NORTH CAROLINA;)
WADE BURNS and SUSIE BURNS)
Respondents.)

NORTH CAROLINA
BUNCOMBE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
22 CVS 4742

JAMES HAMILTON and KRISTINA)
HAMILTON,)
Petitioners,)
v.)
TOWN OF MONTREAT, NORTH CAROLINA;)
WADE BURNS and SUSIE BURNS)
Respondents.)

AFFIDAVIT OF WADE BURNS

Wade Burns, after being duly sworn, deposes and says the following:

1. I am at least 18 years of age and under no disability that would preclude me from testifying in court.
2. I am a resident of the Town of Montreat, North Carolina.

3. My wife, Susie Burns, and I own the property at 778 Foreman Siding, which is adjacent to Petitioner James Hamilton's home located at 780 Foreman Siding. Both properties are located outside of the Town of Montreat corporate limits but within the Town of Montreat Extraterritorial jurisdiction.

4. Upon and information belief, Mr. Hamilton does not live at 780 Foreman Siding year-round, and upon information and belief, it is not his primary residence.

5. Upon information and belief, Mr. Hamilton's home at 780 Foreman Siding was built by his grandfather in 1908.

6. My wife and I, along with Parkes Dibble, Jr. and Leslie Dibble, purchased the 780 Foreman Siding property in 2009. The four of us sold the property to Mr. Hamilton in 2015.

7. Mr. Hamilton also wanted to purchase the 778 Foreman Siding property, but we could not agree on a price. A significant reason why we could not agree on a price was that Mr. Hamilton believed the lot was unbuildable while I believed that it was buildable.

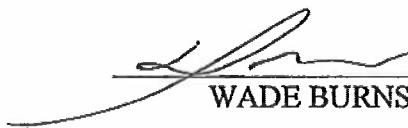
8. We are currently building our new home on the 778 Foreman Siding property, and the property is the subject of these appeals.

9. Since he learned that we intended to build a home at 778 Foreman Siding, Mr. Hamilton has made it clear to us on more than one occasion that he opposes the construction of our home. We have been unable to settle the matter informally.

10. On April 3, 2022, I met with Mr. Hamilton in person in Washington, D.C. During the meeting, Mr. Hamilton stated that he would allow us to build our home if we would move it to thirty (30) feet to the west of its permitted location and onto the lot next door, which we also own, with only part of our home remaining on 778 Foreman Siding property. I told Mr. Hamilton that we could not do that as all of our designs and permits for grading, stormwater, and septic approval

would be voided and we would have to start all over again with permitting. Moreover, I said that there was no assurance that our septic permit would be reissued. I stated that it had already taken about two (2) years to get everything permitted and that we didn't have time to start over.

11. During the meeting, Mr. Hamilton responded to this statement by saying that starting over would take less time than the time he would have us tied up in court.



WADE BURNS

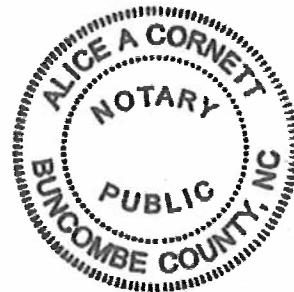
NORTH CAROLINA

Buncombe COUNTY

Sworn to and subscribed before me on this the 4th day of January, 2023.

Alice A. Cornett [SEAL]
, Notary Public

My commission expires: 11-24-26.



09/09/2024 Settlement Proposal from the Hamiltons

The Burns would do the following:

1. Connect the four-foot culvert to the three-foot culvert.
2. Cover the new connecting pipe.
3. Plant a rain garden over or near the newly covered culverts to capture additional stormwater.
4. Agree to repair and remediate any stormwater damage to the ephemeral stream caused by the construction the Burns house.
5. Withdraw the Motion for Sanctions.

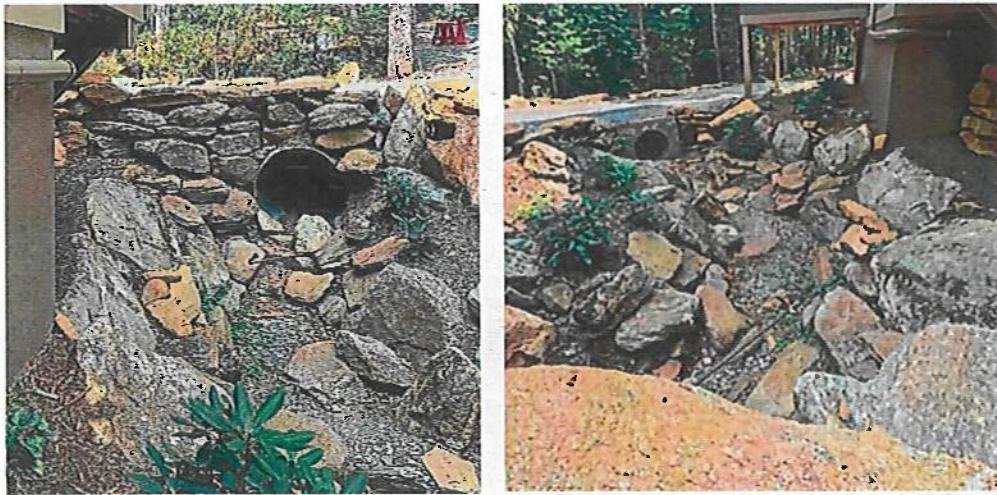
The Hamiltons would do the following:

1. Promptly dismiss all appeals relating to the Burns property.

09/20/2024 T.C. Morphis' Response:

I conducted a site visit on September 9, 2024 and conferred with the Burnses about the proposal. Respectfully, if the proposal is aimed toward reducing and remediating stormwater impacts, we do not believe that any of the requested measures are necessary or would be useful. Below, are our responses to each proposed settlement term:

1. Connect the four-foot culvert to the three-foot culvert.



Both culverts were installed by the prior owner years before the Burnses bought the land. Requiring the two culverts to be connected would be dangerous because the four-foot culvert is located upstream from the three-foot culvert. Connecting the two culverts would force greater water flow from the larger upstream culvert into the smaller downstream culvert, which could lead to the system backing up, failing, and overflowing. Also, Mr. Burns calculates that connecting the two

culverts would reduce the water flow capacity of the overall culvert system by 56%. Lastly, the opening between the two culverts must remain open for emergency clearing access in the event of a major storm.

As noted below, the Burnses have made significant functional and aesthetic improvements to the open area between the two culverts, including landscaping; the installation of boulders, which act to dissipate water energy; the installation of a concrete bulkhead over the three-foot culvert; and a sixteen-inch overflow pipe to assist the three-foot culvert in catching stormwater from major events.

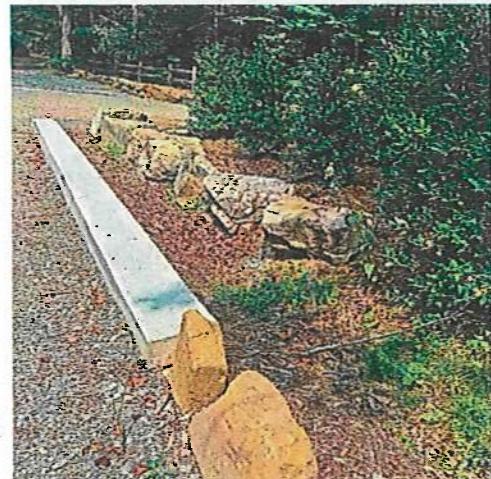
2. Cover the new connecting pipe.

See discussion above.

3. Plant a rain garden over or near the newly covered culverts to capture additional stormwater.

The Burnses have already taken extraordinary measures to capture stormwater, not only from their property but also from upstream properties, including the Burris property. We do not believe planting an additional rain garden is needed or would be useful. Measures already taken include the following:

1. Added a sixteen-inch pipe beside the three-foot existing culvert to increase the emergency flow capacity.
2. Added a concrete bulkhead to prevent a major storm from washing out the entrance to the three-foot and sixteen-inch pipes.
3. Built the top of the bulkhead as a weir and shaped the Burnses' driveway to assist with the conveyance of water to the ephemeral stream bed.
4. Installed very large boulders to line the twenty-six foot area between the culverts. These boulders act as energy dissipators.
5. Installed concrete curbing to prevent rainwater coming from above the Burns property (i.e. from the Burris property) from flowing on to the Hamilton property before it reaches the stream bed.
6. Installed a concrete catch basin just above the Hamiltons' property line to protect their new landscaping. This has kept water from coming onto the Hamilton property and instead routes the water onto the Burns



property, where it is piped away and safely released into the ephemeral streambed below both houses.

7. Installed a major three-foot wide by fifteen-foot long catch basin with one-foot by fifteen-foot long cast iron grating to catch water from the gravel drive entering the lot above the Hamilton property. This allows additional water to be piped into the Burns stormwater system and safely released into the ephemeral streambed below both houses.



8. Installed twelve tons of railroad ballast stone above the new fifteen-foot catch basin to catch potential gravel erosion from the uphill neighbor's lot.

9. Installed new silt fencing on the above-neighbor's lot to keep silt from entering the stream bed above both the Hamilton and Burns properties.

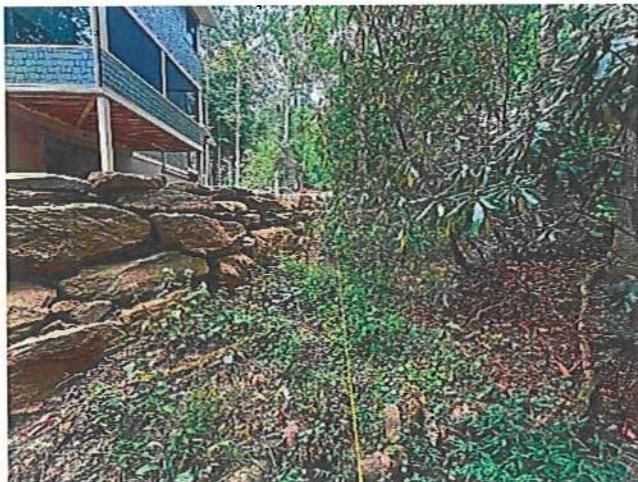
10. Installed two 1,500 gallon stormwater retention tanks and piped all the roof gutters on the Burns house directly into the retention system which then slowly releases the 3,000 gallons at the slow rate of only one gallon per minute. This water release takes three and a half days, which prevents any impact on the Hamilton property.



4. Agree to repair and remediate any stormwater damage to the ephemeral stream caused by the construction the Burns house.

During my site visit, I was unable to identify any stormwater damage either to the ephemeral streambed or to the Hamilton Property. My inspection was limited to what I could see from the Burns property. I did not enter the Hamilton property. During storms, there appears to be some water flowing onto the Hamilton property from the nearby uphill Burris property. The first two photographs below are from August, 2023 and show this water flow. But, as discussed above, the Burnses have already taken steps to mitigate this runoff, to the Hamiltons' benefit. The second two photographs are from my recent site visit and depict the overgrown ephemeral stream bed and gravel silt that has come out of a culvert into the bed. We believe this silt

comes from landscaping sand and gravel the Hamiltons had deposited on their property, not from the Burnses' construction.



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.

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

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 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 6/13/2025 9:52:28 AM are taxed against the Respondents.

THS the __ of June, 2025.

6/13/2025



The Honorable Marvin P. Pope
Superior Court Judge Presiding

14 Pimlico Road
Greenville, SC 29607

October 20, 2025

Montreat Planning and Zoning Commission
P.O. Box 423
Montreat, NC 28757

**Re: Request for Public Comment re: Planning and Zoning Commission, Public hearing
for Conditional Zoning (779 Foreman Siding Road)**

To Members of the Montreat Planning and Zoning Commission:

As owners of the properties listed below, both within a 250' boundary of 779 Foreman Siding Road, we write to express our support for the application requesting a Conditional Rezoning for 779 Foreman Siding Road from R-3 to R-3 CZ.

We have visited the single-family residence at 779 Foreman Siding Road on several occasions. Given that our properties sit immediately downhill from 779 Foreman Siding Road, we take great interest in its potential impact on our own properties. We feel the residence and its features such as its post construction stormwater control system has been designed and built in a manner that suits the topography of the lot, its neighboring properties (including our own), as well as the surrounding terrain. We were especially impressed at the way the residence and stormwater control system capably handled the most damaging effects of significant water and wind from Hurricane Helene in September 2024.

Please grant this request for conditional zoning from R-3 to R-3 CZ to accommodate a single-family residential structure to property owners Wade and Susie Burns.

Sincerely,

Rev. Mary Kathleen Duncan &
Mr. David Duncan

Property Owners:

- Lot 771 (P.I.N. 072111667000000)
- Lot 772 (P.I.N. 072111755900000)

October 23, 2025

To whom it may concern:

We hope that the Burns family are able to keep their house on Foreman Siding as it is.

Sincerely,

Tiffany and William Neville
720 Foreman Siding Rd

Good Morning P&Z Members-

Please see the following Supplemental Response to Wade Burns' Application as well as the attached video.

Please provide this supplemental response to the Burns application for a Conditional Zoning District to the members of the Planning and Zoning Commission. This supplement responds to filings made by Mr. Burns that I first saw when they were posted on the Montreat website on October 13.

1. Mr. Burns emphasizes the stormwater control measures he has installed on his property. It is clear, however, that these measures are intended mainly to prevent wash out and erosion and in large part designed to protect his house, which is built next to the stream bed. See, e.g., Agenda Packet pp. 22,33-34. He overlooks the goal of Section 305.1 of the Montreat Stormwater Ordinance of keeping polluted stormwater out of stream beds. This goal is made plain by Section 319 of that ordinance, which provides that any conditions placed on a variance from the requirements of Section 305.1 must "protect water quality to the maximum extent practicable."

He also lays stress on the drains and curb he installed above our property that, inspection will show, divert stormwater away from his property, but he again fails to state that that stormwater is deposited directly into our portion of the stream bed without our permission, an unacceptable result. See Agenda Packet p. 35.

2. Mr. Burns claims that my lawyer in the Superior Court hearing "falsely" claimed that polluted water running off his roof could pollute the stream bed. See Agenda Packet p. 35-36. However, a video taken by our son, William, on August 19, 2025, which is attached below, shows water running off his porch roof above his portion of the stream bed, a not surprising event given the heavy rains we experience in Montreat.

Moreover, the stormwater that is directed from his roof into stormwater tanks eventually is released into our stream bed, presumably still carrying pollution it picked up on the Burns roof. Mr. Burns does not appear to claim that the stormwater tanks he installed have filtration systems. See Agenda Packet pp.36,43.

3. Mr. Burns says that if the 30 feet stream setback rule is applied his house must be destroyed. That is not necessarily so. Because he owns a 150' by 150' lot to the west of the lot at issue, he could move his house 30 feet from the stream bed.

Moreover, before the Superior Court ruled, I offered Mr. Burns a settlement proposal that would allow him to keep his house if he piped the 26' of stream bed on his property and covered the pipe with soil. (For this to work he also would have to remove any impervious or partially impervious gravel driveway within 30' of the stream bed, including a substantial part of the driveway that is just a few feet from my portion of the stream bed.). Mr. Burns rejected this sensible proposal and indicates in his filing that he is still opposed to it. See Agenda Packet p. 45.

In any event, as the Superior Court found, under NC law he has no vested right to maintain his house, which he completed while our successful appeal from the BOA rulings was pending. N.C.G.S. Section 160D-1402(I)(1).

4. I am unable to attend the October 23 hearing on this matter before the Commission. I plan to observe the hearing via Zoom, but understand that I can listen only and not comment or respond in any way. Consequently, I respectfully suggest that the Commission, upon reading my submissions, provide me in writing before the October 23 hearing with any questions or requests for further information that its members may have. I will do my best to respond in timely fashion.

Thank you,

James Hamilton
3039 Davenport St.NW
Washington,DC,20008
202 363 3020(home)
202 641 3978(cell)

<August 19, 2025.mov>

Response to Comment

From James Hamilton <jhamiltondc@outlook.com>

Date Fri 10/24/2025 2:08 PM

To Alexis Baker <abaker@townofmontreat.org>

Cc Savannah Parrish <sparrish@townofmontreat.org>

1 attachment (2 MB)

2025-07-16 Order on Motion for Sanctions (entered).pdf;

During the Commission's meeting on October 23 one member criticized me for litigating against Mr. Burns in the Superior Court. Mr. Burns himself filed a motion for sanctions in that court, accusing me of improper motives in the litigation.

That court firmly rejected that motion in an opinion, attached below. In it's Findings of Fact, paragraph 5., it stated: " Petitioners further submitted facts and arguments supporting that neither of the Petitions was filed to harass the Respondents or for any other improper purpose, and that the evidence supported that the primary purpose of Petitioners' Petitions was to prevent environmental harm to (a) their property immediately adjacent to the Burns' property that was the subject of the Petitions, and to (b) Flat Creek, Lake Susan and other areas of the Town of Montreat and it's extra-jurisdictional area."

In paragraph 7, the court noted that it " found and concluded both that the Petitions were well-founded in-law and fact and not asserted or pursued for an improper purpose".

In its Conclusions of Law, paragraph 4., the the court stated :" Petitioners' Petitions were not filed for an improper purpose, and were not filed to harass the Burns Respondents or to cause delay, cost or other improper purpose..."

Thus any assertion that my litigation—which I won in a strong opinion by the court holding in the clearest language that the 30 feet stream buffer required by the Montreat Stormwater Ordinance applied to the Burns' property—was brought for improper motives has been flatly rejected by the court in a second forceful opinion.

Please send this email and the attached court order to all the members of the Commission and include these documents in the record of the Commission's proceeding that will be transmitted to the Town Council.

Thank you,

Jim Hamilton

James Hamilton
3039 Davenport Street NW, Washington DC 20008
302 363 3020(home)
202 641 3978(cell)

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
22 CvS 3602

JAMES HAMILTON and KRISTINA
HAMILTON,

Petitioners,

vs.

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

Respondents.

JAMES HAMILTON and KRISTINA
HAMILTON,

Petitioners,

vs.

FILED
DATE: July 16, 2025
TIME: 9:49:37 AM
BUNCOMBE COUNTY
CLERK OF SUPERIOR COURT
BY: M. Stone

22 CvS 4742

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

Respondents.

**ORDER ON RESPONDENTS WADE BURNS' AND SUSIE BURNS'
MOTION FOR SANCTIONS**

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 (1) 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: (a) 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 (b) 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 (2) Respondents

Burns' Motion for Sanctions pursuant to Rule 11, N.C.R.C.P, and for attorney's fees pursuant to N.C.G.S. 6-21.5, filed with the Court on January 31, 2023, and after hearing arguments of counsel for Petitioners, Tom Holman, and counsel for the Respondents Burns, T.C. Morphis, as to all matters referred to above, and with the Court having ruled by separate order in favor of Petitioners as to both the Town of Montreat Section 305 Ruling and the Town of Montreat Variance Rulings, and with the Court having further considered and determined that Respondents Burns' Motion for Sanctions (the "Motion") should be denied, the Court hereby makes the following FINDINGS OF FACT:

1. The Burns Respondents contend, in part, that neither Petitioners' Petition for Writ of Certiorari filed in 22 CvS 3602 nor Petitioners' Petition for Writ of Certiorari filed in 22 CvS 4742 (collectively, the "Petitions") was warranted by existing law or by a good faith argument for the extension, modification or reversal of existing law.
2. The Burns Respondents also contend, in part, that one or both of the Petitioners, through the filing of the Petitions, violated the duty of candor pursuant to Rule 12 of the N.C. Rules of Practice for the Superior and District Courts by seeking a Writ of Certiorari that the Petitioners knew or should have known imposed an "impermissible obligation" upon Respondents.
3. The Burns Respondents further contend, in part, that Petitioners filed the Petitions for an improper purpose, including to harass the Burns Respondents and/or to "cause unnecessary delay or needless increase in the cost of litigation."
4. On March 9, 2023, Petitioners filed with the Court Petitioners' Opposition to Motion for Sanctions in which Petitioners offered both factual and legal support for the Petitions, including support for both Petitions being "facially plausible" and supported by both facts in the extensive records for the Petitions and applicable law.
5. Petitioners further submitted facts and arguments supporting that neither of the Petitions was filed to harass the Respondents, or for other improper purpose, and that the evidence supported that the primary purpose of Petitioners' Petitions was to prevent environmental harm to (a) their property immediately adjacent to the Burns' property that was the subject of the Petitions, and to (b) Flat Creek, Lake Susan and other areas of the Town of Montreat and its extra-jurisdictional area.
6. Both of the Petitions involve extensive records and briefing by both Petitioners and Respondents, and the Undersigned's consideration of the arguments pertaining to these matters was heard over two days, the first on September 9, 2024, and the second on May 2, 2025.
7. After the Undersigned's review of the records, briefs, and other filings in the Petitions and after hearing the extensive arguments of counsel, the Court found and concluded both that the Petitions were well-founded in law and fact and not asserted or pursued for an improper purpose. The Undersigned further found and concluded that the facts and law, and records, supported a ruling in Petitioners' favor as to both Petitions, and

that the Montreat Board of Adjustment decisions were due to be reversed and remanded for further consideration by the Board.

8. The Court, by the November 6, 2023 Order on Petitioners' Motion to Supplement the Record (dated December 22, 2022), Respondent Burns' Motion to Strike and the Respondent Town's Objection (dated February 21, 2023), also granted, in part, Petitioners' request that the record that was the subject of Petitioners' Petition for Writ of Certiorari in 22 CvS 4742 be supplemented to include additional documents, with the Court further denying Respondent Burns' Motion to Strike.
9. The well-founded and otherwise good faith grounds and support for Petitioners' Petitions is further supported by the Court's order on the consolidated petitions entered on June 13, 2025, and filed on June 17, 2025, which findings and conclusions are incorporated herein by reference.

Based on the foregoing Findings of Fact, the Court makes the following Conclusions of Law;

1. Petitioners' Petitions are warranted by existing law, as evidenced in part by the Court's ruling in favor of Petitioners as to both Petitions;
2. Petitioners' Petitions are in all respects "facially plausible" and otherwise supported by a good faith argument for the extension, modification or reversal of existing law;
3. Petitioners' proposed Writ of Certiorari submitted in 22 CvS 4742 did not impose an "impermissible obligation" on Respondents' and was otherwise not submitted for an improper purpose;
4. Petitioners' Petitions were not filed for an improper purpose, and were not filed to harass the Burns Respondents or to cause delay, costs or other improper purpose; and
5. Based on the Court's findings of fact and conclusions of law, and further to the extent of the Court's discretionary authority, Respondents' Motion for Sanctions is due to be denied.

WHEREFORE, IT IS HEREBY ORDERED that Respondents Wade Burns' and Susie Burns' Motion for Sanctions is denied.

This the _____ day of July, 2025. *7/14/2025*

BY:

The Honorable Marvin P. Pope
Superior Court Judge Presiding

FIRST BANK

November 6, 2025

Town of Montreat
Savannah Parrish, City Manager
PO Box 423
Montreat, NC 28757

Dear Savannah

Thank you for allowing First Bank the opportunity to submit a proposal for a credit facility to finance a 2025 Kubota Tractor. The terms of this non-binding proposal are as follows:

Borrower: Town of Montreat.

Guarantors: None.

Amount: \$87,356.94 (100% financing)

Purpose: To finance the purchase of a 2025 Kubota Tractor along with attachments..

Type of Loan: Commercial Term Loan

Interest Rate: Fixed Rate of 5.350%

Term: 60 Months

Repayment: Monthly principal and interest payments based on a 60-month amortization.

Prepayment Penalty: None

Loan Fee: \$750.00

Collateral: 1st lien on the 2025 Kubota Tractor.

Additional Requirements: The loan terms set forth on this Term Sheet are contingent upon the loan meeting all of the requirements for a bank qualified tax-exempt loan under IRS Code Sections 103 and 265 and First Bank policies and procedures. Borrower agrees to take all necessary steps and obtain all approvals required by state and federal statutes to obtain a bank qualified tax-exempt loan from First Bank. Those steps include but are not limited to: adequate publication of public notice, approval of the loan at a meeting of the Organization as well as a meeting of the sponsoring municipality, if applicable, and all necessary votes required to approve the loan. Borrower further agrees to file an IRS Form

8038G at the time of closing and annually thereafter for so long as the loan shall remain outstanding. Borrower acknowledges that First Bank has the authority, both prior to any loan closing as well as after closing to re-price loans and collect any difference in interest or penalties accrued if the loan is ever deemed not to qualify for the bank qualified tax-exempt interest rate.

Financial Statements:	Borrower shall furnish financial statements annually during the loan, and IF requested by First Bank.
Closing Costs:	None from the bank.
Organizational Documents:	Copies of Borrower Organizational Documents certified by an authorized officer or representative and Certificates of Existences shall be furnished to First Bank prior to the loan closing.
Deposit Relationship:	Borrower agrees to maintain deposit accounts at First Bank.
Miscellaneous:	First Bank may require additional documentation as may reasonably be necessary to assure feasibility and authority of the purposes for which loan proceeds will be used.
Assignment:	This proposal is issued to the borrower and cannot be assigned by the borrower without the written consent of First Bank.

This is a proposal, not a commitment. The commitment will be based on the Bank's review of the Borrower's and Guarantor's current financials and other supporting documents and obtaining final approval by the Bank. The proposed rate and terms are reliant upon borrower's prompt response to proceed with full underwriting. An extended borrower response timeframe could allow changes in market conditions and interest rate pricing.

Formal acknowledgement of proposed terms must be communicated within 15 business days. Subject to underwriting and approval, the rate and terms are offered for a transaction closing within 90 days.

Thank you again for allowing First Bank the opportunity to submit this proposal. If you have any questions, please feel free to call me at 828-250-7008.

Sincerely,



David Wooten
Vice President
First Bank

**TOWN OF MONTREAT
FISCAL YEAR 2025-2026
BUDGET AMENDMENT #5**

Be it ordained by the Town of Montreat Board of Commissioners that the following amendment be made to the Budget Ordinance for the fiscal year ending June 30, 2026.

Department(s): General Fund and Fund 29 - Helene

Purpose:

- To include in Fund 29 - Helene budget FEMA reimbursement \$107,265.25 Calvin Trail Culvert and move \$10,000 of those funds to General Fund to purchase Kubota Excavator (6 months of payments)

Section 1. To amend the General Fund and Fund 29 - Helene as follows:

Line Item	Account Number	Amount Decrease	Amount Increase	Amended Budget
Add to Budget: FEMA Proceeds (Rev)	29-3311-300		\$97,265.25	\$327,856.78
Professional Services (Exp)	29-5600-040		\$97,265.25	\$322,736.87
Interfund Transfer to Gen (Rev)	10-3915-902		\$10,000.00	\$7,700.00
Debt Payment (Exp)	10-5600-900		\$7,700.00	\$60,289.25
Interest Expense (Exp)	10-5600-540		\$2,300.00	\$6,300.00

Notes:

Section 2. I certify that the accounting records provide for this budget amendment, and that the revenue source(s) are available:



Rachel S. Eddings
Finance Officer



12/2/25
Date

Section 3. Copies of this amendment shall be delivered to the Budget/Finance Officer and Town Auditor for their direction.

Adopted this _____ day of _____, _____.

Recorded and filed:

Budget Officer/Town Manager

Date

Town Clerk

Date