

**Town of Montreat  
Board of Commissioners  
Special Meeting  
May 27, 2009 – 4:00 p.m.  
Town Services Office**

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The Montreat Board of Commissioners held a Special Meeting on May 27, 2009 at 4:00 p.m. in the Town Services Office. Present among the Board were Mayor Letta Jean Taylor, Mayor Pro Tem Eric Nichols, Commissioner Ruth Currie, Commissioner Bill Hollins, Commissioner Jack McCaskill and Commissioner O’Neil Tate. Representing Town Staff were Town Administrator Ron Nalley, Town Clerk Misty R. Gedlinske and Building Inspector/Code Administrator David Currie. Three members of the public were also present. Mayor Taylor called the meeting to order and gave the invocation.

**Agenda Adoption**

Commissioner Hollins moved to adopt the meeting agenda as presented. Commissioner McCaskill seconded and the motion carried 5/0.

**Proposed Montreat General Ordinance Chapter K, Article IV “Hillside Development”**

Mr. Nalley reported that he and Mr. Currie had met with Mountain Retreat Association (MRA) representatives and several other members of the public to discuss the proposed ordinance, and that the most recent revisions to this document incorporate several suggested changes mentioned during those meetings. He pointed out that the thresholds used in the development density table were similar to those used by Buncombe County, the City of Asheville and several other regional municipalities. He said he was not sure what source this information was originally based on, and that the Board would be free to change all or any portion of the table if they so chose. Mr. Nalley also explained that, due to scope of the revisions to the proposed ordinance, the Town Attorney recommended holding a second public hearing on this matter. This hearing would not be in response to any legal public notification requirement, but rather as an opportunity for the public to review the most recent draft of the proposed ordinance prior to its potential adoption. Staff also suggested sending postcards to all property owners advising them of the public hearing date.

Mr. Currie then began a review of the most recent revisions to the proposed ordinance as follows:

- An exact definition of “Best Management Practices (BMPs)” was added.
- An exact definition of “Non-Conforming Improved Lot” was added to more clearly differentiate between terms used in this ordinance and the Zoning Ordinance’s definition of non-conformity.
- Language was added stating that applicants may request up to a 50% increase in the tabular Approved Graded Area (AGA) if accompanied by a Landscape Plan detailing adequate revegetation of the disturbed area. This increase must be deemed justified by the Code Administrator due to inherent difficulties associated with the subject lot making adequate grading at that location impractical or upon written recommendation of a North

Carolina-registered geotechnical engineer. The additional approved graded area may not be built upon to include impervious cover or structures.

In response to Mayor Pro Tem Nichols' questions concerning geotechnical engineering reports, Mr. Currie explained that the applicant would typically be required to include these items with their proposed building plan. Otherwise, Mr. Currie said he would advise the applicant that such a report was needed depending on the slope degree of the existing grade of the lot. Mr. Currie cautioned against any ordinance language specifying which engineering firms must be used to obtain these reports in order to avoid a potential conflict of interest or other legal liability for the Town.

- Revisions were made to allow applicants with existing lots of 0.30 acre or less in size to request consideration for a reduction of up to 50% in the required front yard building setback to create easier off-street access and reduce the overall impact to the lot.
- Language was added stating that non-conforming improved lots in existence prior to the adoption of this ordinance that violate the minimum provisions for AGA and/or maximum impervious area shall be combined with contiguous lots in the same ownership prior to further development and evaluated for compliance with the minimum provisions of this ordinance.

Mr. Nalley noted that this requirement was consistent with similar language contained in the Zoning Ordinance, and did not apply to vacant lots.

- Language was added stating that a twenty percent (20%) allowance shall be made for existing impervious area on improved lots within the Institutional (I) or Institutional/Residential (I/R) Zoning Districts. If the applicant demonstrates that no possibility of combining adjacent lots exists to achieve compliance, and the maximum allowable increases available for AGA and impervious area still exceeds allowable tabular values, a variance must first be obtained from the Board of Adjustment before additional improvements are permitted for grading or increased impervious area on the property.

Mr. Nalley noted that according to staff's evaluation, this revision eliminated the need for any exemption of the Institutional & Institutional/Residential Zoning Districts from application of the ordinance as originally recommended by the Planning and Zoning Commission. Mayor Pro Tem Nichols asked how this provision may affect any of the MRA's further expansion plans. Mr. Currie said he had done a sample evaluation for Assembly Inn and determined that the proposed ordinance would not apply because the lot's slope was less than 40%. Mr. Nalley stated that Sylvan Heights may be an example of a property that could not be expanded under this provision.

Commissioner Currie referred to the language addressing vehicular access construction and suggested that this section be clarified to state that a consultation with a North Carolina-registered geotechnical engineer would be required prior to the start of any land-disturbing activities to construct roads, streets and driveways on slopes greater than 40%. The Board

agreed by consensus. Commissioner Currie also commented on the importance of the aspects of the proposed ordinance addressing viewscape protection and aesthetic concerns, stating that these issues were integral to the document's purpose and intent.

- Revisions were made to the language detailing the measures by which an intensity bonus may be granted. Specific language was included to state that intensity bonuses shall not allow a structure to violate the requirements of the underlying Zoning District or allow development in the case of a non-conforming improved lot.
- The description of Table III – Development Density was revised to clarify the existing slope requirement of 40% or greater threshold for ordinance compliance.

Mayor Pro Tem Nichols asked about the amount of staff time necessary to administer the proposed ordinance. Mr. Currie estimated that a significant amount of time would be needed initially due to the newness of the regulations, but expected that amount to decrease over time. He also stated that he was working to develop a set of administrative standards for his use to ensure each applicant's plans were evaluated consistently.

Commissioner McCaskill asked how many remaining undeveloped lots were owned by private individuals. MRA President Pete Peery estimated that about 113 undeveloped lots remained in their ownership and about 67 were privately owned. Discussion was heard concerning how Town newsletters and other public notices were normally distributed and the number of property owners who may not have received these publications. Staff explained that the tax scroll information used to address newsletters and other publications were updated annually by the Buncombe County Tax Department, and that a small amount of mailings were often returned for lack of updated address information or other reasons. Commissioner McCaskill pointed out that the proposed ordinances were also posted on the Town's website.

Commissioner Hollins felt it was important to make sure the public had an opportunity to review and comment on the most recent version of the proposed ordinance. Staff advised that the Board could hold a public hearing on this matter at the June 11 Town Council Meeting if they so chose.

### **Public Comment**

Pete Peery was recognized and said the MRA had received correspondence from individuals who had purchased lots threatening litigation against the MRA because they were not notified of potential ordinance establishment or revisions that may make their lots unbuildable. Mr. Peery thanked Town staff for their time and assistance in meeting with MRA staff to further discuss the proposed ordinance but said he still had concerns over certain aspects of the most recent revisions. He asked the Board to uphold the Planning and Zoning Commission's initial recommendation for properties in the Institutional and Institutional/Residential Zoning Districts to be exempt from the proposed ordinance. He said he was grateful for the accommodations made for undeveloped lots but felt that some concessions should be made for undeveloped lots as well to give more flexibility in their land use options. He also suggested that any safety issues related to steep slope construction may be better addressed through proper planning in the initial

design phase of development rather than through ordinance regulations. Mr. Peery said the MRA staff also considered the proposed density table to be excessively restrictive and not clearly defined as to whether it was designed to address viewscape or safety concerns. He referred to the many acres of undeveloped land the MRA had dedicated into permanent preservation through their Conservation Easement and felt that viewscape concerns had already been addressed in this manner. MRA staff was also not convinced that there was an adequate scientific basis for any claim that the density table was designed to address safety concerns. Mr. Peery also advised that according to MRA staff's calculations, the proposed ordinance would devalue their undeveloped properties by 34% through limitations on the number of lots that could be replatted and sold.

Mary Standaert commented that it would have been helpful to have MRA staff attend Planning and Zoning Commission meetings as this ordinance was being developed in order to have their input sooner. She referred to the draft conservation subdivision design regulations the Commission was currently considering and asked for the MRA's involvement to determine how their properties might be affected. She also explained that the density and light reflectance value components of the draft Hillside Development ordinance had been developed in response to a strong public desire expressed during development of the Comprehensive Plan to preserve the community's character.

Mayor Pro Tem Nichols disagreed with the MRA's assessment that the proposed ordinance would devalue their undeveloped lots and asked for more information on how this claim was determined. Mr. Peery said it was the MRA's belief that the proposed density requirement would place limitations on how these lots could be developed, and would therefore diminish their sale value. Commissioner McCaskill also disagreed with this claim.

Wade Burns asked whether geotechnical engineering information would be needed to obtain a zoning compliance permit for a construction project on a steep lot or if this would be a building permit requirement. Mr. Currie explained that he would review the zoning compliance application, determine the property's slope and advise the applicant of the appropriate requirements. Mr. Burns then referred to the proposed language allowing a 50% reduction in front yard setback requirements for small, steeply sloped lots. He suggested that the Board may want to consider allowing this reduction on steep lots of any size in the interest of reducing site disturbance. He claimed that requiring the MRA to combine their non-conforming lots prior to further development may interfere with any financing options their projects may be eligible for. He also said this practice contradicted the commonly accepted theory that Institutional properties were entitled to less restrictive density requirements. Mr. Burns further spoke about the language allowing up to a 50% increase in the tabular Approved Graded Area (AGA) under certain conditions and said this provided some degree of flexibility for small, steeply sloping lots. He also said that a member of another local architectural firm had agreed with previous comments by others that certain aspects of the ordinance may be more appropriately addressed through zoning regulations, that responsible engineering design would address any safety issues and that the proposed density tables seemed to be focused more on aesthetic concerns. Mr.

Burns also believed that stringent footprint reductions on small lots would limit property owners to building only multistory structures that may not be practical in cases of limited mobility.

Mary Standaert commented that the issue of viewscape was related to both the visual impact of structures on steep areas and the amount of time necessary for disturbed slopes to recover environmentally.

Discussion was then heard among the Commissioners concerning when to hold a second public hearing on the proposed Hillside Development ordinance and what language should be included on any notifications to property owners. Mayor Pro Tem Nichols moved to call for a Public Hearing on June 11, 2009 at 7:15 p.m. or as soon thereafter as possible to discuss proposed revisions to Montreat General Ordinance Chapter K, Article IV, "Hillside Development." Commissioner Tate seconded and the motion carried 5/0. The Board also directed staff to send out postcards notifying all property owners of the public hearings scheduled for the June 11, 2009 Town Council Meeting and stating that both the proposed Hillside Development and Stormwater Management ordinances may have an impact on their property. Mr. Nalley also clarified that the proposed Hillside Development ordinance text to be presented at the June 11 Public Hearing would be the same language as presented at this meeting except for the minor staff corrections the Board had requested.

There being no further items of business to discuss, Commissioner Tate moved to adjourn the Special Meeting. Commissioner Currie seconded. The motion carried 5/0 and the meeting was adjourned at 5:38 p.m.

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Letta Jean Taylor, Mayor

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Misty R. Gedlinske, Town Clerk