

TOWN OF MONTREAT

ZONING ORDINANCE

ARTICLE V – DEFINITIONS

(Revised 3/08/2001)

(Revised 3/13/2008)

(Revised 10/12/2006)

(Revised 10/08/2009)

(Revised 5/10/2007)

500 Interpretation of Certain Words or Terms. Except as specifically defined herein, all words used in this Ordinance have their customary dictionary definitions. For the purposes of this Ordinance, certain words or terms used herein are defined as follows:

500.1 Words used in the present tense include the future tense. Words used in the singular include the plural, and words used in the plural include the singular;

500.2 The word "shall" is always mandatory;

500.3 The word "may" is permissive;

500.4 The word "lot" includes the word "plot" or "parcel";

500.5 The word "person" includes a firm, association, organization, partnership, trust company, limited liability company, or corporation as well as an individual;

500.6 The word "used" or "occupies" as applied to any land or Building shall be construed to imply that said land or Building is actually "arranged" or "designed" to be used or occupied;

500.7 The word "map" or "zoning map" shall mean the Official Zoning Map of the Town of Montreat, North Carolina;

500.8 The term "Planning Commission" refers to the Montreat Planning and Zoning Commission. The terms "Town Commissioners" "Town Board of Commissioners" or "Mayor and Town Commissioners" refer to the legally constituted and elected governing body of the Town of Montreat. The term "Board of Adjustment" refers to the Zoning Board of Adjustment for the Town of Montreat.

501 Definitions.

Accessory Building or Use: A building or use that: 1) is clearly incidental to and customarily found in connection with a principal building or use; 2) is subordinate to and serves a principal building or a principal use; 3) is subordinate in area, extent, or purpose to the principal building or principal use served; 4) contributes to the comfort, convenience, or necessity of occupants in the principal building or principal use served; and 5) is located on the same lot as the principal building or use served.

Alley: A service roadway which provides secondary access to the side or rear of abutting property and not intended for general traffic circulation.

Antenna: Any device installed for more than three days which is primarily intended to receive or to transmit airway communication signals.

Antenna Dimensions: The length, width, or depth of an antenna, not including any part of its support Structure.

Bed and Breakfast, Home: A private owner-occupied residence with one o four guest rooms where overnight accommodations and a morning meal are provided to transients for compensation and where the bed and breakfast use is subordinate and incidental to the main residential use of the building. The homeowner shall reside on site and employment shall not exceed one full-time employee in addition to the owner.

Bed and Breakfast, Inn: A private owner-occupied residence with five to twelve guest rooms where overnight accommodations and a morning meal are provided to transients for compensation and where the Bed and Breakfast Inn is operated primarily as a business. The homeowner shall reside on site and employment shall not exceed the equivalent of three full-time employees in addition to the owner.

Boarding House: A dwelling unit of part thereof where, for compensation, lodging and meals are provided.

Buildable Area: That portion of any lot which may be used or built upon in accordance with the regulations governing the Zoning District within which the lot is located when the front, side, and rear yard requirements for the Zoning District have been subtracted from the total area. The required front, side and rear yards shall be measured inward toward the center of said lot from all points along the respective property lines. Buildable area shall be computed by measuring the allotted distances, perpendicular from each property line (See Section 614 for irregularly shaped lots). One exception exists for this requirement as follows: Where a lot line is the center of the street and a utility easement is provided along the street, the setback shall be measured from the side of the utility easement closest to the center of the lot.

Building: Any Structure, fully or partially enclosed, and isolated by exterior walls constructed or used for residence, business, industry or other public or private purposes, or accessory thereto, and including tents, trailers, mobile homes, and similar Structures whether stationary or movable.

Building Height: The vertical distance measured from average natural grade encompassing the living areas of a structure to the highest point of its roofline, or from the top of the parapet or roof surface for flat-roofed structures. Carports, garages, decks and other non-inhabited additions to structures that may increase the building footprint are not included in calculation of average natural grade.

Cemetery: A parcel or land used for interment of the dead in the ground or in mausoleums.

Certificate of Zoning Compliance: A certification that plans and premises conform to the provisions of the Zoning Ordinance.

Clinic: An establishment where medical, mental or dental patients, who are not lodged overnight, are given examinations and treatment.

Columbarium: A Structure containing niches for the deposit of urns containing cremains or an ash garden for the scattering of cremains.

Conditional Use: A specific use which may be permitted in a Zoning District by the Board of Adjustment subject to the Board's findings that the use would not adversely affect adjacent property or the health, safety or general welfare of persons in the area adjacent to the use. Such use may be permitted only in a Zoning District where said use is specifically listed as a conditional use.

Conditional Use Permit: A permit issued by the Zoning Board of Adjustment for a use which is permitted in a Zoning District, subject to review and approval by the Board of Adjustment. The Conditional Use Permit shall be issued only when the specific conditions and review procedures set forth in this ordinance are met to maintain and protect the health, safety and general welfare of persons residing in the area, and to insure the compatibility of the use with adjacent properties and within the entire community of Montreat.

Community Facilities: Facilities designed to serve the community such as libraries, and community centers, provided that such facilities are not operated for profit.

Customary Home Occupation: Any occupation conducted in a dwelling unit or accessory Building provided that:

- 1) No person other than members of the family residing on the premises shall be engaged in such occupation;
- 2) The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants, and not more than fifty percent (50%) of the floor area of the dwelling unit shall be used in the conduct of the home occupation;
- 3) There shall be no change in the outside appearance of the Building or premises, or other visible evidence of the conduct of such home occupation other than one (1) sign, not exceeding a four (4) square foot area, non-illuminated, and mounted flat against the wall of the principal Building;
- 4) No traffic shall be generated by such home occupation in greater volume than would normally be expected in a residential neighborhood, and any need for parking generated by the conduct of such home occupation shall be met off the street and other than in a required front yard.

Dedication: The appropriation of land or an easement therein by the owner for use by the public as evidenced by the recording of a legal instrument (title transfer, deed restriction, etc.). The area is usually a strip of land, a street right-of-way or utilities easement, within which there is to be or may be located streets, sidewalks, utility systems and drainage Structures or a lot intended to be used for a public purpose such as a park, playground, or other public facility.

Density: The number of dwelling units per acre of land developed or used for residential purposes. Unless otherwise clearly stated, density requirements in this Ordinance are expressed in dwelling units per acre of land devoted to residential use exclusive of land utilized for streets, alleys, parks, playgrounds, school grounds, or other public uses.

Diameter Breast Height (DBH): The diameter of the trunk of a tree four and one-half feet above average grade.

District: Any section of the Town of Montreat in which zoning regulations are uniform.

Dormitory: A Building used as group living quarters for a student body or religious order as an accessory use for a college, boarding school, monastery or other similar institutional use. Dormitories may contain common, shared kitchen facilities and bathrooms but shall not contain individual kitchen facilities and private bathrooms.

Dwelling: Any Building, or portion thereof, which is designed for living and/or sleeping purposes for one or more families.

Dwelling Unit: A single unit providing complete, independent living facilities for one or more persons including permanent facilities for living, sleeping, eating, cooking, and sanitation.

Dwelling, Single-Family: A detached dwelling unit, other than a mobile home, designed for or occupied exclusively by one family, except for Vacation/Conference Rentals as allowed in Chapter H, Article II of the General Ordinances of the Town of Montreat.

- 1) Dwelling, Two-Family: A detached Building including two individual dwelling units.
- 2) Dwelling, Multi-Family: A dwelling intended or used for occupancy by three or more families living independently of each other, with the number of families in residence not exceeding the number of dwelling units provided.

Easement: A grant of one or more of the property rights by the property owner to and/or for use by the public or another person or entity for a particular purpose or purposes. Examples include access easements, drainage easements or utility easements.

Educational Facility: An Educational Facility includes, but is not limited to the following: Buildings and equipment used primarily for the education of children and/or adults, instructional research, conferences, administrative purposes, and supporting service operations. An Educational Facility includes classroom Buildings, laboratories, lecture halls, libraries, administration

Buildings, conference centers, gymnasiums, field houses, dormitories, counseling centers, and Buildings for the storage of transportation and maintenance equipment, office machines and furniture.

Family: One or more persons occupying a single Dwelling Unit, provided that unless all members are related by blood, adoption, marriage or legal guardianship, no such family shall contain over four (4) unrelated people.

Family Care Home: A home that provides room and board, and personal care and rehabilitation services to people with special needs for no more than six (6) residents. Persons with special needs are those with physical, emotional, or mental disabilities or are elderly. No Family Care Home shall be located closer than one mile from any other Family Care Home.

Farm: A tract of land, generally composed of one (1) acre or more, usually with a house, barn, and other accessory Buildings, on which crops and/or livestock are raised for livelihood. A farm may consist of land or water devoted to the raising of livestock or crops.

Fence: A barrier intended to prevent escape or intrusion or to mark a boundary.

- 1) Fence, Closed: A fence in which the opening through which clear vision is possible from one side to the other on a horizontal plane comprise thirty percent (30%) or less of the total side area of the fence.
- 2) Fence, Open: A fence in which the openings through which clear vision is possible from one side to the other on a horizontal plane comprise seventy percent (70%) or more of the total side area of the fence.

Flammable Liquids: A liquid having a flash point below one hundred degrees (100°) Fahrenheit and having a vapor pressure not exceeding forty (40) pounds per square inch absolute at one-hundred degrees Fahrenheit as defined by the National Fire Codes of the National Fire Protection Association as amended.

Flood: A temporary rise in stream flow or stage that results in water overtopping its banks and inundating areas adjacent to the watercourse.

Floodway: That portion of the channel and flood plain of a stream designated as a minimum area to provide passage for the Regional Flood, without increasing the elevation of that flood at any point by more than one foot. For the purposes of the Ordinance, the Floodway shall be along Flat Creek and its tributaries as defined on the Official Zoning Map of the Town of Montreat, as amended.

Floodway Encroachment Lines: Lateral limits of a Floodway along streams or other bodies of water, within which, in the direction of the stream or other body of water, no Structure or fill may be added, nor flammable liquids stored, unless specifically permitted herein. The purpose is to preserve the flood carrying capacity of the Floodway. The location of the Floodway Encroachment Lines is such that the floodway between them, including the channel, will handle the Regional

Flood flow without increasing the flood stage by more than one foot.

Flood Fringe Area: The land area located between the Floodway Encroachment Lines of a Floodway and maximum elevation subject to inundation by the Regional Flood as defined herein.

Flood, Regional: A flood which is representative of the largest floods to have occurred on a particular stream or a similar stream in the same geographical area.

Floor Area, Gross: The sum of the gross horizontal areas of the several floors of a Building from the exterior face of exterior walls, or from the centerline of a wall separating two Buildings, but excluding any space where the floor-to-ceiling height is less than six feet.

Floor Area, Net: The total of all floor areas of a Building, excluding stairwells, elevator shafts, equipment rooms, interior vehicular parking or loading, any space where the floor-to-ceiling height is less than six feet, and all floors below the first or ground floor, except when used or intended to be used for human habitation or service to the public.

Front Building Line: A line extended from side property lines which runs parallel to a street or streets and which shall be situated the same distance from said street or streets as the shortest distance between said street or streets and the primary Building on the lot. Where a lot is situated at an intersection of two streets the lot shall be considered to have two front Building lines, each as separately delineated by the definition herein.

Garage, Private: An accessory Building or portion of a principal Building used for the storage of private motor vehicles, in which no business, occupation, or service for profit is in any way connected. The term "garage" shall include the term "carport."

Garage, Repair: Any garage which is used for storage, repair, rental, servicing, washing, adjusting, or equipping of automobiles or other vehicles. A garage exceeding 850 square feet in area or used to store more than four (4) automobiles, shall be deemed a Repair Garage.

Greenspace: Strips of publicly owned and maintained land, generally but not always following the rights-of-way of public streets, that are used only for the recreation, fishing, greenspaces and beautification of the Town as defined by the "Greenspace Resolution" unanimously adopted by the Town Commission on July 1, 1983.

Grocery Store (Major): An establishment which deals principally in a variety of food and general supplies for household uses. Characteristics of this type of establishment include a Building of large physical size, a high volume of business, and a wide variety of products.

Grocery Store (Convenience): An establishment which deals principally in a limited selection of a variety of convenience items including household goods, automobile supplies and dry goods. In addition, the Building in which such an establishment is housed is generally smaller and designed for easy access with an emphasis on serving the customer as quickly as possible.

Group Care Facility: A facility which provides services to seven (7) or more individuals of whom one or more are unrelated. These individuals are handicapped, aged, or disabled, are undergoing rehabilitation, and are provided services to meet their needs. This category includes uses that are licensed or supervised by any Federal, State, or County Health/Welfare Agency, or any group dwellings (all ages), halfway houses, nursing homes, resident schools, resident facilities, and foster or boarding homes, so long as they provide care for seven (7) or more individuals.

Hospital: An institution providing health services primarily for human in-patient medical or surgical care for the sick or injured, including related facilities such as laboratories, out-patient facilities, and staff offices which are in an integral part of the facility.

Inn: A commercial facility for the housing and feeding of transients. *(Revised 10/12/06)*

Livestock: Animals which are generally domesticated and confined to farms. Such animals shall include cattle, sheep, goats, swine, horses, mules, fish and poultry.

Loading Space, Off-Street: Space conveniently located for pickups and deliveries, scaled to the delivery vehicles expected to be used, and accessible to such vehicles even when required off-street parking spaces are filled.

Lodge: A building or group of buildings under single management containing both rooms and dwelling units available for temporary rental to transient individuals or families.

Lot: A parcel of land occupied or capable of being occupied by a main Building or group of main Buildings and accessory Buildings, together with such yards, open spaces, lot width and lot area as are required by this Ordinance, and having not less than the minimum required lot width upon a street, either shown on a plat of record, or considered as a unit of property and described by metes and bounds.

- 1) Lot, Corner: A lot located at the intersection of two or more streets or located where one street makes a sharp angle of eighty to one hundred and twenty degrees (80°-120°).
- 2) Lot, Double Frontage: A lot which has two street frontages; however, no corner lot shall qualify as a double frontage lot unless said corner lot has frontage on three or more streets.
- 3) Lot Frontage: The frontage of a lot shall be construed to be the portion nearest the street.
- 4) Lot, Interior: A lot which has frontage on only one (1) street other than an alley.

Lot Measurements:

- 1) Depth of a lot shall be considered to be the average of the distances from the front property line to the rear property line. Also see Section 614.

- 2) Width of a lot shall be considered to be the horizontal distance between side lot lines measured at the projected front line of the principal Building or proposed principal Building.
- 3) All lot measurements shall be converted from slope to horizontal lines.

Lot of Record: A lot which is a part of a subdivision, a plat of which has been recorded in the Office of the Register of Deeds of Buncombe County, prior to the adoption of this Ordinance, or a lot described by metes and bounds, the description of which has been so recorded prior to the adoption of this Ordinance.

Manufactured Home: A dwelling unit, transportable in one or more sections, which is NOT constructed in accordance with the standards of the North Carolina Uniform Residential Building Code for One- and Two-Family Dwellings, is eight feet or more in width and is 40 feet or more in length, and is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air conditioning and electrical systems contained therein.

Modular Home: A dwelling unit constructed in accordance with the construction standards of the North Carolina Uniform Residential Building Code for One- and Two-Family Dwellings and composed of components substantially assembled in a manufacturing plant and transported to the Building site for final assembly and placement on a permanent foundation. For the purposes of this Ordinance, modular homes shall be considered equivalent to site-built homes.

Motel: An establishment providing sleeping accommodations with a majority of all rooms having direct access to the outside without the necessity of passing through the main lobby of the building.

Natural Grade: That slope of land which has been cleared, with no major disturbance of soil.

Non-Conforming Structure: A Structure which does not conform with the requirements of the Zoning District in which it is situated, either at the effective date of this Ordinance or as the result of subsequent amendments to this Ordinance.

Non-Conforming Use: A legal use of a Building and/or land that antedates the adoption or future amendments of this Ordinance and does not conform to the requirements for the Zoning District in which it is located.

Nursery School: A privately owned and operated school designed to provide daytime care or instruction for two (2) or more preschool children, and operated on a regular basis. The term "nursery school" shall include the terms "day care center" and "child care center."

Open Storage: Unroofed storage areas, whether enclosed or not.

Overlay District: A Zoning District that adds requirements to the Zoning District over which it lies. Uses or proposed uses within an overlay District must comply with all requirements of both

the overlay District and the underlying Zoning District. Where conflicts appear to exist between the requirements of the two Districts, the more restrictive requirement shall apply.

Park: A public facility for recreation, which may have commercial activities for recreational uses only.

Parking Space: A storage space of not less than nine feet (9') by eighteen (18') for one (1) automobile, plus the necessary access space. (See Section 900.2).

Portable Storage Container: A transportable, fully enclosed, box-like container that is designed for temporary storage of materials and/or equipment. Such containers are uniquely designed for their ease of loading to and from a transport vehicle and moved to various locations on demand. For the purposes of this Ordinance, the trailer portion of a tractor trailer shall be considered a portable storage container when expressly used for the purpose of on-site storage.

Potable Water Supply: A source of water that contains no objectionable pollution, contamination, minerals or infectious agents and is considered by the Town to be satisfactory for drinking.

Principal Building: A Building in which is conducted the principal use of the parcel on which it is situated.

Professional Office: The office of persons performing professional services such as doctors, lawyers, architects, engineers, accountants, real estate brokers, and insurance salesmen.

Property Line: The legally established boundary of a lot, which boundary shall be considered coincident with any abutting public street right-of-way line unless the metes and bounds description contained in a recorded deed for a lot clearly and specifically establishes the lot boundary at some other location.

Regulated Tree: A Regulated Tree shall be any self-supporting woody perennial plant located within the right-of-way lines of any private property as established by the Town of Montreat, or twenty-five (25') feet of either side of the center line of any street, whichever is more restrictive. Further, all trees on public street rights-of-way or public property owned by the Town of Montreat shall be considered to be Regulated Trees.

Removal of a Regulated Tree: The cutting down of any Regulated Tree and all other acts which cause premature death or destruction of any Regulated Tree.

Religious Complex: A Building or group of Buildings for the purpose of religious worship including the sanctuary(s), education Building(s), recreation Building(s), child care facilities, and parsonage.

Right-of-Way: A dedicated or condemned strip of land reserved for a specific use, such as for a street or utility easement.

Setback: The distance from any lot line to the closest edge of a Structure or sign.

Setback Line: A line establishing the minimum allowable distance between the nearest portion of any Building, excluding the outermost three feet (3') of any steps, roof, gutters and similar fixtures, and the property line when measured perpendicular thereto. Covered porches, whether enclosed or not, shall be considered as part of the main Building and shall not extend beyond the setback line.

Senior Citizens' Center: A privately or publicly owned and operated facility designed to provide daytime care and/or instruction for two (2) or more senior citizens, and operated on a regular basis.

Sign: Any words, lettering, numerals, parts of letters or numerals, figures, phrases, sentences, emblems, devices, designs, trade names or trademarks by which anything is made known, including any surface fabric or other material or Structure designed to carry such devices, such as are used to designate or attract attention to an individual, a firm, an association, a corporation, a profession, a business, or a commodity or product, which is exposed to public view and used to attract attention. This definition shall not include the flag, badge, or insignia of any governmental unit. (See Article X)

Street: A dedicated right-of-way for vehicular traffic which affords the principal means of access to abutting property.

Street Line: The dividing line between a street right-of-way and the contiguous property.

Structure: Anything constructed or erected, the use of which requires permanent location on the ground, or attachment to something having a permanent location on the ground, including fences, business signs, and billboards.

Studio: The workshop of an artist, sculptor, photographer or craftsman.

Subdivision: All divisions of a tract or parcel of land into two (2) or more lots, Building sites, or other divisions for the purposes of sale or Building development (whether immediate or future) including all divisions of land involving the dedication of a new street or a change in existing streets; but the following shall not be included within this definition nor be subject to the regulations authorized by this Section:

- 1) The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the Town as shown in the Subdivision Regulations;
- 2) The division of land into parcels greater than ten (10) acres where no new street right-of-way dedication is involved;
- 3) The public acquisition by purchase of strips of land for the widening or opening of streets or other public uses; and

- 4) The division of a tract in single ownership whose entire area is no greater than two (2) acres into not more than three (3) lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of the Town as shown in the Subdivision Regulations.

Support: Any Structure that an antenna is connected to which is intended to provide structural competency. Support shall include any associated guy wires, poles, beams, foundations, anchors or other devices which attach antenna to the ground or to a Structure capable of accommodating additional engineering demands resulting from antenna and support parts.

Swimming Pool: A water-filled enclosure, permanently constructed or portable, having a depth of more than eighteen inches below the level of the surrounding land, or an above-surface pool, having a depth of more than thirty inches, designed, used and maintained for swimming and bathing purposes.

Trailer: Any vehicle or Structure capable of moving or being moved, over street and highways on its own wheels or on flat beds or other carriers, which is designed to be utilized to:

- 1) Provide temporary quarters for the conduct of a business, profession, trade or occupation; or
- 2) Serve as a carrier of people, new or used goods, products, or equipment;

Use: The purpose or activity for which land or Buildings are designed, arranged, or intended or for which land or Buildings are occupied or maintained.

Use by Right: A use that is primary and is permitted as a matter of right on any lot within a Zoning District as expressly listed in Section 700 of this Ordinance.

Variance: An exception to the terms of the Zoning Ordinance as authorized in Section 1203 B. As used in this Ordinance, a Variance is authorized only for height, area, and size of Structure of size of yards and open spaces (See Section 1204 for Variance Application Process).

Visible: Capable of being seen without visual aid by a person of normal visual acuity.

Yard: A space on the same lot with a principal Building which is open, unoccupied, and unobstructed by Buildings or Structures from ground to sky except where encroachments are expressly permitted.

- 1) Minimum Front Yard: A required open space on the same lot with a principal Building, between the front setback line and the front street property line and extending the full width of the lot.
- 2) Minimum Rear Yard: A required open space between the rear setback line of the principal Building and the rear line of the lot and extending the full width of the lot.

- 3) Minimum Side Yard: A required open space on the same lot with a principal Building between the side setback line of the Building and the side line of the lot and extending from the front property line to the rear property line.

Zoning Official: The officer or other designated authority charged with the administration and enforcement of this Ordinance.

Zoning District: The term applied to various geographical areas of the Town of Montreat for the purpose of interpreting the provisions of the Ordinance. The Zoning Districts are designated with the use of symbols on the Official Zoning Map. Regulations controlling land use in the various Zoning Districts within the Town of Montreat are set forth in Article VII of this Ordinance.

Figure 1. Yards and Setbacks