



TOWN OF BLACK MOUNTAIN BOARD OF ADJUSTMENT

January 16, 2025

REGULAR MEETING AGENDA

Time: 6:00 PM

Town Hall Council Chambers | 160 Midland Avenue, Black Mountain, NC 28711

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1. **CALL TO ORDER**
 - 1.A. **Welcome**
 - 1.B. **Determination of Quorum**
 2. **ADOPTION OF AGENDA**
 - 2.A. **Motion: To adopt the agenda as presented [or as amended]**
 3. **ADOPTION OF MINUTES**
 - 3.A. **Motion: To adopt the minutes of November 21, 2024, and December 19, 2024, as written [or as amended]**
 4. **OLD BUSINESS**
 5. **NEW BUSINESS**
 - 5.A. **Variance Request - 200 Old State Ten Road**

5.B. Variance Order - 115 East Street

5.C. Variance Order - 200 NC 9 Highway

6. COMMUNICATION FROM ZONING BOARD OF ADJUSTMENT

7. COMMUNICATION FROM STAFF

8. ADJOURNMENT

**TOWN OF BLACK MOUNTAIN
BOARD OF ADJUSTMENT**

The Black Mountain Board of Adjustment held its regular meeting on Thursday, November 21, 2024, at 6:00 p.m. in Town Hall at 160 Midland Avenue, Black Mountain, North Carolina.

I. CALL TO ORDER

The meeting was called to order with the following members present:

Lauren Dodgin, Chair
John Hines
Nicole Stallings
Chloe Brown
Linda Brinson, Alternate

Absent:

Andrew Homrich
Amy Golden
David Bryson

Staff:

Wesley Barker, Town Clerk
Russell Cate, Planner I/Zoning Administrator
Brian Gulding, Town Attorney

The meeting was called to order at 6:00 p.m. and duly constituted and opened for business with a quorum of four (4) regular members and one (1) alternate.

Chair Lauren Dodgin read the opening statement and Town Attorney Brian Gulden explained standing.

II. ADOPTION OF AGENDA

The appellant for 102 Byrd Road removed his appeal request. The appeals were reversed to have 115 East Street be heard first and 200 NC 9 Hwy heard second. The amended agenda was approved by consensus.

III. ADOPTION OF MINUTES

The minutes of August 15, 2024, were approved as written by consensus.

IV. OLD BUSINESS

None.

V. NEW BUSINESS

1. Variance Request – 115 East Street

The applicant is requesting a variance to the rear setback requirement of fifteen feet to seven feet to convert an accessory structure into a secondary dwelling and also requesting a variance from the side setback requirement of five feet to three feet for an accessory structure. Chair Dodgin asked that any parties with standing to advise the board.

Ryan Queen, 118 Hillside Drive, affirmed that his testimony regarding his standing in this matter is true. Mr. Queen said that he owns the five-foot strip of land and the other parcel behind the

Board of Adjustment Regular Meeting
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subject property. Mr. Queen said he eventually would like to build a house on the other parcel and that the variance could affect that. The five-foot strip and the parcel behind are in contention of ownership and Mr. Queen said that he is trying to get them combined and into one name and get the appropriate amount of square footage to be able to build a structure. Attorney Gulden explained the structures that are the subject of the variance are on property owned by the applicant and do not encroach onto the property owned by Mr. Queen. John Hines made a motion to grant standing to Mr. Queen. The motion was approved by a vote of 5-0.

At this time, Wesley Barker administered the oath to the applicants, parties with standing, and staff.

No board members had any ex-parte or conflicts in this matter and neither party had an objection to the panel.

Chair Dodgin opened the evidentiary hearing.

Russell Cate presented the staff report to the board. The first structure is to be converted into a secondary dwelling and the second structure is to be renovated into an office and workout space. The property is zoned UR-8. The property is not within a floodplain or floodway and is not a designated steep slope lot. The accessory structure that is to be converted into a secondary dwelling meets the accessory structure setback requirements but would be non-conforming to the secondary dwelling setback requirements. The accessory structure that is to be converted into an office is a legally non-conforming structure as it currently sits three feet from the side property line. Since the renovation costs exceed fifty percent of the assessed value, the structure has to meet the current requirements. Attorney Gulden asked if the property was properly posted, advertised in the Black Mountain News, and adjacent property owners notified. Mr. Cate said that yes, and that the information is included in the staff report. Mr. Queen asked who the surveyor of the survey was. Mr. Cate said that he could not recall the name, but that he always does verify that the surveyor is a licensed surveyor. Mr. Queen asked if it is the job of the surveyor to determine ownership of the property. Mr. Cate said that he was not sure as he is only making sure the plat meets the requirements of the land use code. There were no further questions for Mr. Cate.

Michael Delang and Sandy Geisel, 115 East Street, are the owners of 115 East Street. The property was marketed as two lots and the contract showed the two PINs of the front lot and the back lot and were not aware of the five-foot strip. Ms. Geisel said that they did not notice the "less and except" clause in the warranty deed. They want to restore the garage as an apartment and live in one and rent out the other long-term. There is a letter from the attorney that was included in the application that does verify that Mr. DeLang and Ms. Geisel own the back parcel but not the five-foot strip of land and because of that, they do not have the setback requirements and is why the variance is being requested. They are not adding onto the structures, just renovating the interiors. Ms. Brinson asked if they were under the impression that they were purchasing all of the lots when they signed the deed and Mr. DeLand and Ms. Geisel said that yes, they thought that they were purchasing all of the property and the five-foot strip did not show up in any documents or title searches until after the fact. There were no further questions for the applicants.

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Ryan Queen, 118 Hillside Drive, said that he objects to the variance because it will affect his future endeavors and that he owns both of the back parcels. Mr. Queen said that all he did was transfer the property from one business name to another. Mr. Queen then read the legal description of one of the parcels (the five-foot strip of land) that was transferred back to him and his grandmother. Mr. Queen then read the legal description for the parcel behind the five-foot strip. Mr. Queen said that granting the variance would deprive him of his right to build on his property. Mr. Queen said that he tried to explain to Mr. DeLang and Ms. Geisel about the quit-claim deed and that there was a page missing in the copies he received and that may be why there was confusion on the five-foot strip. There were no questions for Mr. Queen.

Chair Dodgin asked for rebuttal evidence from the applicant. Mr. DeLang said that as for financial hardship, they purchased the property as an investment with the intent of living in the back and renting out the front and the income from the rental would allow them to have an investment home and without the variance, they would not have the rental income from the front property. Ms. Geisel said that nothing will look different with the buildings regardless of who owns the property behind the subject property.

Chair Dodgin asked for rebuttal evidence from staff and Mr. Cate said that there was none.

Chair Dodgin asked for rebuttal evidence from the party with standing. Mr. Queen asked for clarification about the variance request and for confirmation that it was not about land ownership. Chair Dodgin confirmed that it is not about land ownership. Mr. Hines explained that the applicants are looking to change the use of the structures, but the structures would remain in the same place they currently sit. Attorney Gulden explained what a setback is. Attorney Gulden said that the variance would not prevent Mr. Queen from doing anything he is legally able to do in conformance with the land use code.

There were no closing arguments.

Chair Dodgin made a motion to close the evidentiary hearing. The motion was seconded by Nicole Stallings and approved by a vote of 5-0.

The board deliberated and found that:

1. There are unnecessary hardships because they purchased the property thinking that they would have enough room and not need a variance and now there are property issues that have arisen that are now causing the need for a variance.
2. The hardship results from conditions that are peculiar to the property because the buildings are already existing and there is the odd five-foot strip behind the property that was not known about until after closing.
3. The hardship did not result from actions taken by the applicant in that the applicants purchased the property thinking that they owned the five-foot strip and would have enough room to do their intended projects and found out after closing that they did not own that five-foot strip and therefore, that took away land that they thought they had to pursue their projects.

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4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance such that public safety is secured and substantial justice is achieved because it allows the property owner to use their property for a legal purpose.

Chair Dodgin made a motion to grant the variance reducing the rear setback from fifteen feet to seven feet to convert the garage into a secondary dwelling and to reduce the side setback from five feet to three feet to convert the accessory structure into an office and workout space.

2. Variance Request – 200 NC 9 Hwy

The applicant is requesting a variance from the stream buffer and transitional area be removed from the parcel's design restrictions.

At this time, Wesley Barker administered the oath to the applicants, parties with standing, and staff.

Jon and Laurie Brooks, 373 Lake Eden Road, owns property that adjoins the subject property and are concerned about drainage issues and property value. John Hines made a motion to grant standing to Mr. and Mrs. Brooks. The motion was approved by a vote of 5-0.

Scott Roy, 4 Laurel Branch Drive, owns the property across the road on NC 9 Highway and received only the zoning notice and is not sure if he will need to speak or not. The board felt that given the proximity of the property and the strangeness of the times and storm recovery, John Hines made a motion to grant standing to Mr. Roy. The motion was approved by a vote of 5-0.

Chloe Brown acknowledged that she knows two of the parties but has not spoken to them about the case. Attorney Gulden asked if she could be fair and impartial, and she replied yes. No other board member reported any ex parte or conflicts. There were no objections to the panel.

Russell Cate presented the staff report to the board. The requirements in the ordinance require that there be a stream buffer on either side of the watercourse depicted as a solid blueline on the most recent USGS map. The measurement is done thirty feet horizontally from the top of the streambank or watercourse in a direction perpendicular to stream flow. The other requirement is that on top of the thirty-foot requirement, there is an additional twenty-foot transitional area is required immediately landward of the buffer. The applicant feels that the requirements do not provide functionality to the design of a commercial site, an on-site study did not find a blueline stream on the site, USGS maps from 1994 to 2019 do not show the stream, and lastly, existing sites within the buffer are not designed to meet the buffer requirements. The applicant feels that safety and traffic issues would occur if they had to meet the buffer requirements. Mr. Cate read the purpose of the stream buffer requirements. The staff report includes the standards and exceptions for the buffer area and the transitional area. The existing parcel is 1.6 acres and is zoned HB-8. The existing building was most recently a bank building. The staff report includes the provision that new development would have to meet all current requirements and because the plan is to demolish the existing structure and building a new commercial structure, staff believes the project would have to meet all current regulations. Mr. Cate said that he had pointed the applicants to exception six which speaks about piping the stream and that the piped stream would not be requirement to meet the standards. Mr. Cate was asked about piping a stream and how that

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relates to the natural feature of the stream. Mr. Cate again read the exception and said that staff requires documentation from US Army Corps that it meets the requirements of piping a stream. Mr. Cate said he would not confirm or deny if there was a stream there currently or what the grate on the property is for. Mr. Cate was asked if a member of the public or a property owner has a mechanism to request a change to the USGS maps based on current conditions and Mr. Cate said he did not know. There were no further questions for Mr. Cate.

Kevin Maurer from Kimley-Horn and Josh Harley from Circle K presented as the applicants. Mr. Maurer spoke about piping the stream and that the grate inlet is collecting downstream of the stream and there is an inlet collecting upstream and there is an existing pipe and the entire area does get captured by at least a ten-year storm, but feels that it does capture up to a one-hundred-year storm. Mr. Maurer spoke about streams on the USGS maps being created from GIS data and that the existing stream is downstream from the subject property and would have to go through two properties to get to the subject property and then would be captured by the existing grate inlet. Mr. Maurer said that they do not see a stream there nor does it appear that there was ever a stream there. In regard to hardship, to meet the stream buffer would eliminate the back driveway to Black Mountain Avenue and the drive aisle widths would have to be reduced. This would cause loss of interconnectivity and backup traffic within the lot. Mr. Harley said that Circle K has strict design requirements within the company and wants to ensure that the site is safe and will not cause any safety or traffic issues or decreased business. The new site would still be captured to the current requirements and would not cause any additional stormwater problems. The applicants were asked if they were in the area on September 27th during the storm to see the amount of water that was inundating surrounding properties, and they stated that they were not, but in designing stormwater measures, they are held to the standards set by the town and the state and that the current storm goes past any design requirements. There were no further questions for the applicants.

Jon Brooks, 373 Lake Eden Road, said that when rainwater comes off of the railroad tracks and comes into the basement of his building and then leaves his property onto the other property, there is a section that enters into the piped area and Mr. Brooks appealed to the applicants to address that area to allow more water to flow through to prevent backup onto his property. Mrs. Brooks said that the water that has to be mitigated for even a regular storm floods the basement and has to be pumped out and that the low spot needs to remain to allow the dumping of the water. Mrs. Brooks appealed to the applicants to keep the existing trees on the site as much as possible and to work with the cuteness of the town. There were no further questions for Mr. and Mrs. Brooks.

Chair Dodgin asked for rebuttal evidence from the applicants and there was none.

Chair Dodgin asked for rebuttal evidence from staff and Mr. Cate said that there was none.

Chair Dodgin asked for closing statements. Mr. Harley said that he hears the concerns, and they want to be good neighbors and he is from North Carolina and appreciates the sentiment and want to work with the neighbors and a good business that the town can be proud of.

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Mr. Books thanked the applicants for allowing the property to be used by a Mennonite group volunteering to help with storm recovery and Mr. Harley said that it was their pleasure.

Chair Dodgin made a motion to close the evidentiary hearing. The motion was seconded by Nicole Stallings and approved by a vote of 5-0.

The board deliberated and found that:

1. There are unnecessary hardships because while there is an ephemeral stream on the property, it is not a blueline stream and the buffer requirements would cause an issue with internal queuing.
2. The hardship results from conditions that are peculiar to the property because the property was already there and has already been developed as well as the surrounding properties that have also been developed.
3. The hardship did not result from actions taken by the applicant in that the property is already in existence and has already been developed once.
4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance such that public safety is secured and substantial justice is achieved because it allows for additional measures to be taken to treat stormwater and prevent more impervious surface from being added.

John Hines made a motion to grant the variance removing the stream buffer and transitional area requirements from the design restrictions. The motion was approved by a vote of 5-0.

VI. COMMUNICATION FROM BOARD OF ADJUSTMENT

None.

VII. COMMUNICATION FROM STAFF

None.

VIII. ADJOURNMENT

With no further business, the meeting was adjourned at 7:10 p.m.

Prepared by:

Lauren Dodgin, Chair

Jennifer Tipton, Senior Admin

Board of Adjustment Regular Meeting
November 21, 2024

**TOWN OF BLACK MOUNTAIN
BOARD OF ADJUSTMENT**

The Black Mountain Board of Adjustment held its regular meeting on Thursday, December 19, 2024, at 6:00 p.m. in Town Hall at 160 Midland Avenue, Black Mountain, North Carolina.

I. CALL TO ORDER

The meeting was called to order with the following members present:

Lauren Dodgin, Chair
John Hines
Nicole Stallings
Linda Brinson (Alternate)

Absent:

Chloe Brown
Andy Homrich
David

Staff:

Jennifer Tipton, Senior Admin
Russell Cate, Planner I/Zoning Administrator

The meeting was called to order at 6:00 p.m. and duly constituted and opened for business with a quorum of three (3) regular members and one (1) alternate in attendance.

II. ADOPTION OF AGENDA

John Hines made a motion to adopt the agenda as presented. The motion was approved by consensus.

III. ADOPTION OF MINUTES

There were no minutes to adopt.

IV. OLD BUSINESS

None.

V. NEW BUSINESS

1. Approval of Order for 210 N Park Lane Appeal

Nicole Stallings made a motion to adopt the order as written. The motion was approved by consensus.

VI. COMMUNICATION FROM BOARD OF ADJUSTMENT

None.

VII. COMMUNICATION FROM STAFF

None.

VIII. ADJOURNMENT

With no further business, the meeting was adjourned at 6:02 p.m.

Board of Adjustment Regular Meeting
December 19, 2024

Prepared by:

Lauren Dodgin, Chair

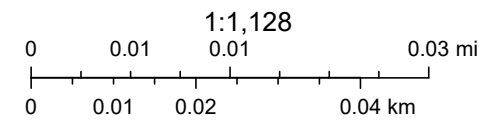
Jennifer Tipton, Senior Admin

Board of Adjustment Regular Meeting
December 19, 2024

Buncombe County



December 17, 2024



VARIANCE APPLICATION www.townofblackmountain.org**PROPERTY OWNER INFORMATION**

Owner Name

Tammy and Brian Gregg

Owner Address (Number, Street, City, State, ZIP)

200 Old State 10 and 200 Kerlee Heights Rd

Home Phone

Cell Phone

828 778-9326

Email Address

tbright3212@gmail.com

APPLICATION FOR VARIANCE**I request a variance/variances from the following provisions of the ordinance:****Section Number(s):** 1.7.3 **Section Title(s):** E**Subsection letter(s) and/or number(s):** 2 **Subsection Title(s):** _____

So that the below mentioned property can be used in a manner indicated by the plan attached to this form, or if the plan does not adequately reveal the nature of the variance, as more fully described herein (*if applying for a variance in dimensional requirements, state the revised setbacks or height limitations desired below*):

PROPERTY INFORMATION

Parcel Number

061977002100000

Current Zoning

HB-8

Acreage

0.33. I think?

Address

200 Old State 10 Rd

Average Slope %

Use of Property

Personal Home

CERTIFICATION

I hereby certify that all of the information presented by me on this application is accurate to the best of my knowledge, information and belief. I acknowledge that withdrawal of this application after notice has been made will result in forfeiture of any application fees associated with said application. I acknowledge that attendance at the Zoning Board of Adjustment meeting is mandatory for the review of this application.



Petitioner Signature

12/5/24

Date

OFFICE USE ONLY

Date Received:

Fee: \$600.00

Cash: ☐ Check: ☐ # _____Credit: ☐

Case Number:

Meeting Date:

Town of Black Mountain
160 Midland Avenue, Black Mountain, NC 28711
Phone: 828-419-9300 ~ Fax: 828-669-2030

VARIANCE BURDEN OF PROOF

In the spaces provided below, indicate the facts you intend to demonstrate and the arguments that you intend to make to demonstrate to the ZBA that it can properly grant the variance as provided for in Chapter 1, Section 1.7.3 Variances. The Zoning Board of Adjustment does not have unlimited discretion in deciding whether to grant a variance.

Please indicate how the proposed project meets the below requirements. If additional space is required, please provide the information on a separate sheet of paper.

1. Indicate how an 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.

We are trying to find the best solution for removing and storing everything in our home on the property in order to redo the inside of the house after having the floodwaters come into our home. This is causing a hardship as we are having to get quotes with Benz sitting all over our home and not being able to have the house cleaned out is pushing things farther and farther out. We had previously applied for a permit for a connex storage container but have unfortunately not been able to find any that would rent for a reasonable price only purchases. And the permit was for a temporary connex.

2. Indicate how 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.

We are having a hard time finding what we need in size to be able to fit onto the property where we can keep an eye on it with our camera and also keep it from being in the areas that normally get wet from above us with runoff. The blue lines that were shown to us on the map sent by your office have never had water come through beside our home. And there is a curb above that would keep any water from coming through that direction. We are asking that we be able to put an additional building near the one we already have in place. So that we can keep an eye on everything better and not near the road or highway and not in the yard where our dogs go out.

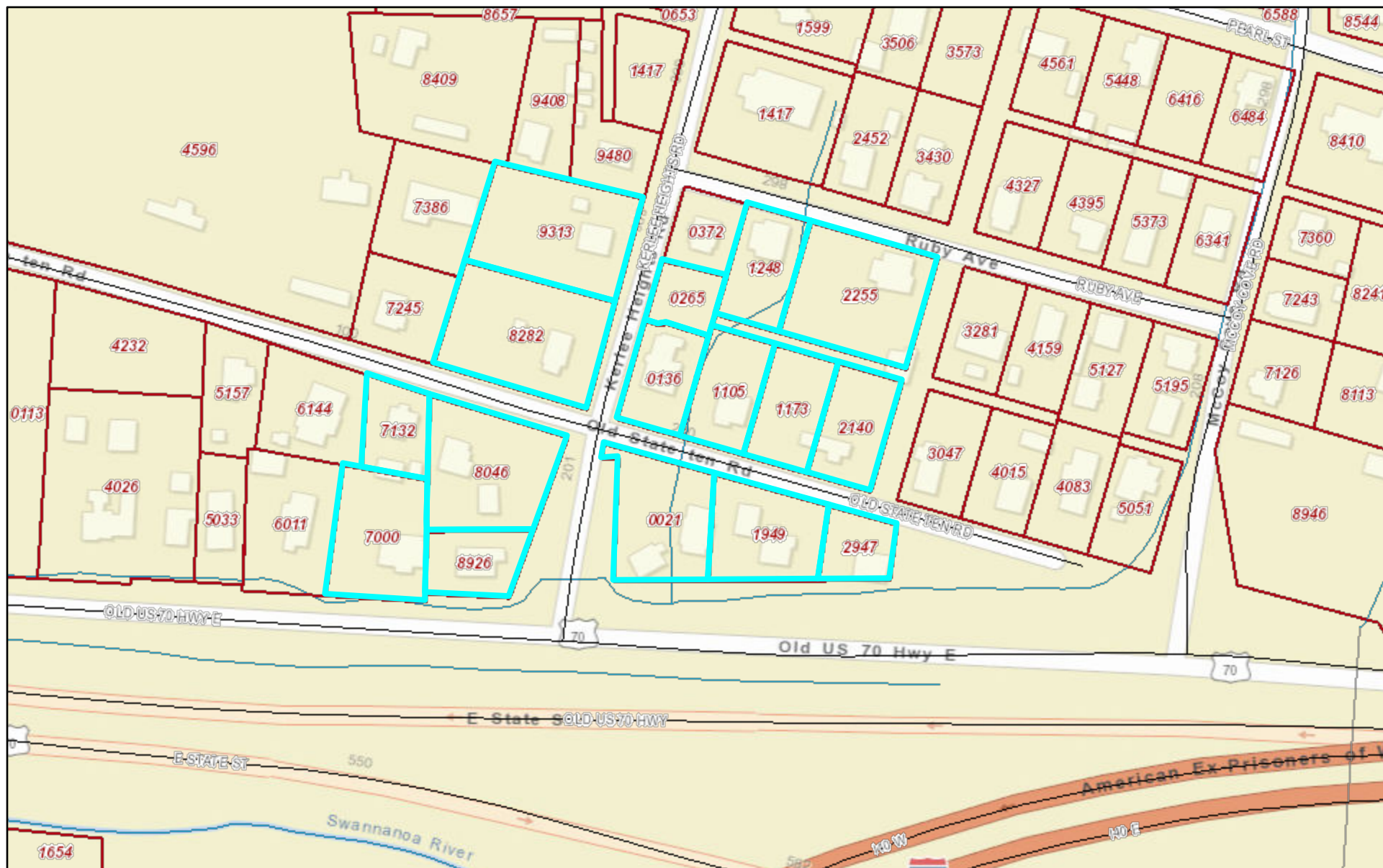
3. Indicate how the hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

We had no control over the water that came through our property on September 27th 2024. For this reason we are having to redo our home and try and figure out how to do everything in a very timely and economical way.

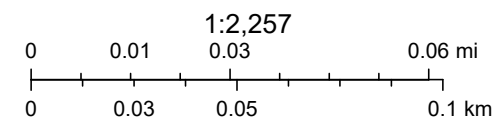
4. Indicate how the requested variance is consistent with the spirit, purpose and intent of the ordinance, such that public safety is secured and substantial justice is achieved.

With the building being placed where we are asking We are still able to keep an eye on our neighbors from the rest of the property. We have quite a few elderly neighbors in our neighborhood and several airbnbs behind us. We are trying to make sure that we are a good neighbor and keep everything in one area so we can keep our neighborhood safer

Buncombe County



December 17, 2024



Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand),



Town of Black Mountain

160 Midland Avenue ♦ Black Mountain, North Carolina, 28711
Phone: 828-419-9300 ♦ Fax: 828-669-2030 ♦ TDD: 1-800-735-5962

NOTICE OF VARIANCE REQUEST (REGARDING NEIGHBORS WITHIN 200 FEET OF PROPERTY)

DATE: **January 1, 2025**

TO: **Property Owner**

FROM: **TOWN OF BLACK MOUNTAIN
ZONING ADMINISTRATOR**

ADDRESS OF PROPOSED VARIANCE:

200 Old State Ten Road

PIN #: **0619-77-0021.00000**

CURRENT ZONING CLASSIFICATION: **HB-8**

THIS PROPERTY IS CURRENTLY USED FOR THE PURPOSE OF:

residential

THE VARIANCE IS REQUESTED FROM THE FOLLOWING PROVISIONS OF THE ORDINANCE:

Chapter 20, Section 20-382, Stream buffer size

THE VARIANCE IS REQUESTED SO THAT THE PROPERTY CAN BE USED IN A MANNER INDICATED HEREIN:

To place a storage building within the stream buffer area on the property to store personal items and furnishings to repair house from flood damage. In order to get a storage container large enough to store all items, the placement would need to be within the buffer area.

An evidentiary hearing will be held on Thursday, January 16, 2025, @ 6:00 p.m. in the Council Room of Town Hall, 160 Midland Avenue.

This is your notification for this request specified under 1.7 of the Land Use Code for the Town of Black Mountain. Section 1.7.1 (d) (3) indicates that notice be provided to all property owners within 200 feet of the site's property lines. Notice of the time, date, and place of the hearing will be published in the Black Mountain News in accordance with the Land Use Code of the Town of Black Mountain.

Sec. 20-382. Stream buffer size.

Stream buffers shall apply on each side of the stream and shall measure 30 feet horizontally from the top of the stream bank in a direction perpendicular to the stream flow.

(Ord. No. O-20-08 , 8-10-2020)

PINNUM	OWNER	ADDRESS	CITYNAME
'061966892600000'	BLAIR GARY L;BLAIR SHEILA K	2225 MIRAMONTE CT	NAPLES
'061967700000000'	ALLEN DOROTHY K	215 OLD US HWY 70 E	BLACK MTN
'061967713200000'	GRIFFITH DAVID M;GRIFFITH TINA M	116 OLD STATE 10 RD	BLACK MTN
'061967804600000'	BARKER ELIZABETH B	118 OLD STATE 10 RD	BLACK MTN
'061967828200000'	GROVES PROPERTIES TRUST U/W OF KAREN H GROVES	1227 HIGHLAND AVE	HENDERSONVLE
'061967931300000'	GROVES PROPERTIES TRUST U/W OF KAREN H GROVES	1227 HIGHLAND AVE	HENDERSONVLE
'061976194900000'	KERLEE JUDY A	202 OLD STATE 10 RD	BLACK MTN
'061976294700000'	KERLEE JUDY A	202 OLD STATE 10 RD	BLACK MTN
'061977002100000'	GREGG BRIAN K;GREGG TAMMY R	200 KERLEE HEIGHTS RD	BLACK MTN
'061977013600000'	ALCORN STEPHEN MICHAEL;ALCORN KIMBERLEY	202 KERLEE HEIGHTS RD	BLACK MTN
'061977026500000'	ALCORN STEPHEN MICHAEL;ALCORN KIMBERLEY	202 KERLEE HEIGHTS RD	BLACK MTN
'061977110500000'	CAROLINA HILLS LLC	222 SUMMA ST	WEST PALM BCH
'061977117300000'	KERLEE TAMMY LYSHELLE	43 GALAX LN	BLACK MTN
'061977124800000'	KATHRYN E SHAWGO REVOCABLE TRUST KATHRYN E SHAWGO (TRUSTEE)	202 RUBY AVE	BLACK MTN
'061977214000000'	KERLEE TAMMY LYSHELLE	43 GALAX LN	BLACK MTN
'061977225500000'	CAPPS RICHARD C	771 ROCKY BRANCH LN	EVANS

STATE	ZIPCODE
FL	34105
NC	28711
NC	28711
NC	28711
NC	28792
NC	28792
NC	28711
NC	28711
NC	28711
NC	28711
NC	28711
FL	33405
NC	28711
NC	28711
NC	28711
GA	30809

**Town of Black Mountain Staff Report
Board of Adjustment**

Case No: V-25-01

Case Name: 200 Old State Ten Rd.

Hearing Date: January 16, 2025

Procedure: Variance Evidentiary Hearing

Address of Variance Request:

200 Old State Ten Road

Black Mountain, NC 28711

Property ID Number (PIN): 0619-77-0021-00000

Applicant:

Tammy Gregg and Brian Gregg

200 Old State Ten Rd.

Black Mountain, NC 28711

Request:

The applicants are requesting a reduction in the size of the Stream Buffer and the Transitional Area that's required per the Stream Buffer Protection Standards, for the placement of an accessory structure.

Town Staff:

Jennifer Tipton, Clerk to Board of Adjustment

Russell Cate, Planner 1/Zoning Administrator

I. SUMMARY OF REQUEST

The applicants are seeking a variance from two watercourse requirements in the Stream Buffer Protection Standards, which is Article IX of Chapter 20 (Environment):

- A stream buffer on each side of watercourses depicted as a solid blue line on the most recent U.S. Geological Survey (USGS) seven and one-half minute quadrangle topographic maps, measured 30 feet horizontally from the top of the stream bank in a direction perpendicular to the stream flow. (Sections 20-381 and 20-382)
- An additional 20-foot transitional area immediately landward of the stream buffer. (Section 20-383)

The project involves the placement of an accessory structure. The applicants submitted the following preliminary site plan:



II. PROCESS – REQUIRED CITY APPROVALS

In addition to this variance, the applicants will need to obtain zoning compliance approval and a building permit that demonstrates compliance with all applicable standards of the Zoning Ordinance and the North Carolina Building Codes.

III. LAND USE

The primary objective of stream buffer protection standards is to maintain land adjacent to streams in an undisturbed vegetative state in order to enhance and maintain water quality, protect stream channel wetlands, minimize stormwater runoff, reduce sedimentation and erosion, conserve plant and wildlife habitat and protect wildlife movement corridors. The standards further this objective (1) by regulating water temperature through shading of the stream bed, (2) by limiting sedimentation from streambank erosion and stormwater flow, and (3) by supporting aquatic life through the provision of organic debris such as leaves and twigs. (Section 20-380)

The Stream Buffer Protection Standards impose the following limitations:

1. The stream buffer shall remain in natural undisturbed forest vegetation and no development or land-disturbing activities shall be undertaken therein except as follows:

Subject to prior written authorization by the planning director or his/her designee, the following activities may be undertaken within the stream buffer provided they meet all the standards specified herein as well as other applicable provisions of the land use code:

- (1) Crossings by streets, driveways, culverts, railroads, recreational features, intakes, docks, utilities, bridges or other facilities shall be allowed provided that they are designed to minimize the amount of intrusion into the stream buffer. Streets and driveways may run generally within and parallel to the stream buffer only where no other access to the property is feasible and when their design minimizes the amount of intrusion into the stream buffer. Crossing with a width of 40 feet or more are permitted only when it has been demonstrated that there is no practical alternative.
- (2) Stream buffers may be used for passive recreational activities, such as unpaved or paved trails or greenways, provided that service facilities for such activities, including but not limited to parking, picnicking and sanitary facilities, are located outside of the stream buffer. Where practical, such activities shall be kept at least 15 feet from the stream bank.
- (3) Clearing and revegetating the stream buffer pursuant to a plan approved by the planning director when it has been demonstrated that such clearing and revegetation will improve stream buffer's pollutant removal efficiency.
- (4) Stormwater control structures and temporary erosion control structures shall be considered utilities for the purposes of this section and may be allowed in stream buffers, provided that:
 - a. The property owner or applicant demonstrates to the satisfaction of the planning director or his/her designee that such facilities cannot be practicably located outside of the stream buffer, and that any proposed stormwater control structure is sited and designed to minimize disturbance of the stream and stream buffer.
 - b. Alternate methods of stormwater and erosion control shall be considered prior to approval of such structures in the stream buffers.
 - c. A vegetated buffer of a width approved by the planning director or his/her designee shall be required around the stormwater control structure.
 - d. Any land disturbed for these structures shall be revegetated with appropriate native species in accordance with a revegetation plan approved by the planning director or his/her designee.
- (5) Sanitary sewer lines, on an alignment generally parallel to the stream, may be allowed in stream buffers, provided that:
 - a. The property owner or applicant demonstrates in writing to the satisfaction of the public services director that the sanitary sewer lines cannot be practicably located outside of the stream buffer.
 - b. Design and construction specifications minimize damage to the stream and the possibility of line leakage.
 - c. The sewer line is located at least 15 feet from the top of the stream bank; and
 - d. The sanitary sewer plan and a plan for revegetating the stream buffer disturbance shall be approved by the public works director.
- (6) Streams may be piped, thereby exempting the piped section of the stream from stream buffer requirements, provided such piping complies with the permitting/certification requirements of the Clean Water Act and any other applicable state and federal regulations. Piping undertaken for the purpose of accommodating public roads, railroads, greenways, recreational facilities and private roads and drives should be designed so that the right-of-way or roadway-and-shoulder width is not more than is

necessary considering the design capacity for the facility and so that the proposed stream piping is not substantially in conflict with the other objectives of this section. Where stream piping is approved, a vegetated buffer area or other device shall be provided at any intake or discharge structure. All buffers and physical improvement related to the stream piping shall be located entirely on the site or, pursuant to easement, on lands adjacent to the site.

(7) Selective removal of invasive exotic species in accordance with a plan approved by the planning director or his/her designee.

(8) View corridors are allowed so long as the soil is undisturbed and the natural forest floor, ground cover and understory vegetation are left intact. Pruning associated with the creation and maintenance of a view corridor is exempt. Thinning of the overstory and mid-canopy trees is permissible with the written authorization of the planning director or his/her designee.

Site plan approval by the planning director or his/her designee shall be required for any of the stream buffer intrusions described above. When any of the activities described above involves land clearing, the cleared area shall be revegetated pursuant to an approved plan. However, where a site plan is not required by any other provision of the land use code, the director of public works is authorized to approve plans for stream piping and erosion control structures in stream buffers.

2. There shall be a 20-foot transitional area immediately landward of the stream buffer which may be graded, landscaped, and/or used for pedestrian or vehicular purposes so long as no impervious materials are utilized.

(Sections 20-383 and 20-385)

Existing Conditions

The subject property is a .33-acre lot in the Highway Business (HB-8) zoning district. The parcel has a 1,084 square foot dwelling unit that was built in 1956, and a 1,008 square foot accessory structure that was built in 1960. (Acreage and structure-size information is from the Buncombe County property record card.)

The subject property is bordered on the north by Old State Ten Road, on the west by Kerlee Heights Road, on the south by Old US 70 Hwy East, and on the east by a lot also zoned HB-8 and that also has a dwelling unit.

Accessory structures are defined in Section 1.2.3 as follows:

Accessory structure: A structure detached from a principal building and located on the same lot and incidental and subordinate to the principal building or use which is not used as a dwelling unit.

Accessory structures are permitted in the HB-8 zoning district subject to the following:

A. In no case shall an accessory structure be located closer than five feet to the nearest property line.

B. For land used for agriculture or as a bona fide farm that is greater than one acre, there is no limit to the number of accessory structures allowed, provided that such structures shall be incidental to the agricultural use and shall not cover more than 30 percent of the total lot area.

C. In industrial districts, there is no limit to the number of accessory structures provided that such structures are incidental to the industrial use.

D. In commercial districts, unless otherwise provided in a special use permit, no more than two accessory structures shall be permitted per lot.

E. In residential and mixed-use districts, no more than two accessory structures shall be permitted per lot, provided that any such structure shall meet the following requirements:

1. Accessory structures shall not be more than two stories.

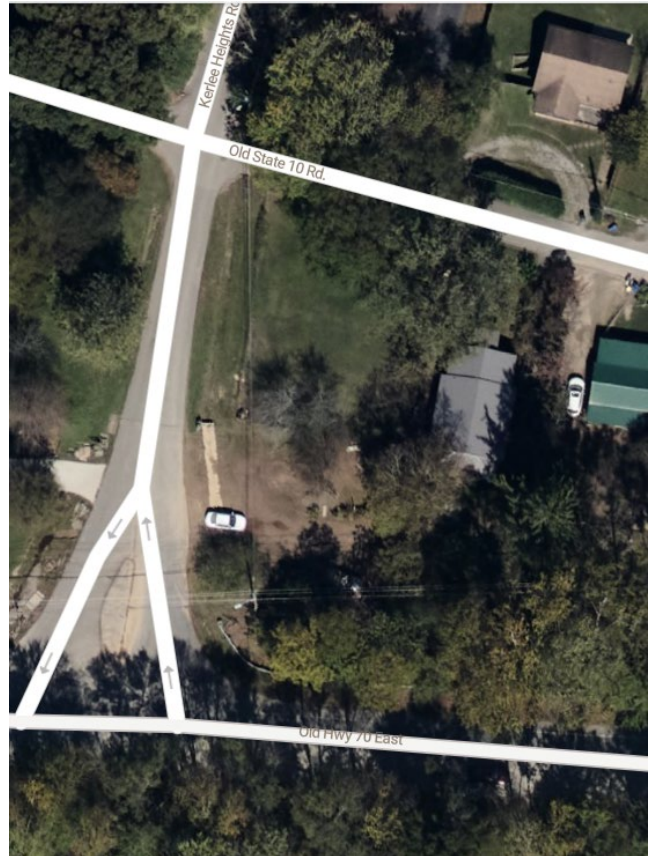
2. For lots adjacent to town or state roadways, accessory structures shall be located only in the side or rear yards.

3. For lots not adjacent to town or state roadways, accessory structures may be located in what is determined as the front yard by the zoning administrator. The accessory structure may be located no further forward than the primary structure furthest from the road of any adjacent properties never to be less than the existing setback requirements.

4. Accessory buildings shall not cover more than 30 percent of the required side or rear yards. Accessory structures may require screening at the direction of the zoning administrator if the accessory structure may be considered a nuisance under the town's nuisance regulations or if it is being used for commercial purposes while abutting a residential use or district.

(Section 4.5.4 of Chapter 4)

Below are two images. On the left is an image from Buncombe GIS with the *5 Foot Contours*, *Stream & River* and *2020 – DFIRM Flood Data* layers turned on (parcel is not in the 100-year flood zone) (2023 image). On the right is an image from NOAA (early October 2024 image).



Below are street views of the property – photo on left is from Kerlee Heights Road, photo on right is from Old State Ten Road (photos taken on 12/9/2024):



IV. NOTIFICATION

Notice of the variance request and hearing was mailed to all property owners within 200 feet of the project site. Public notice was posted on the Town bulletin board and on the Town of Black Mountain website on January 2, 2025. Legal notice appeared in the Black Mountain News the weeks of January 2, 2025, and January 9, 2025. The property was posted with a notice listing the time and date of the hearing.

V. ANALYSIS

Item 6 in Section 20-385 explains how “streams may be piped, thereby exempting the piped section from stream buffer requirements, provided such piping complies with the permitting/certification requirements of the Clean Water Act and any other applicable state and federal regulations.”

The **applicability** section of the Stream Buffer Protection Standards stresses that although the term “stream” is used in the standards, and although the trigger for the standards is any USGS “blue line stream,” the standards apply to “all **watercourses**” depicted on the most recent USGS seven and one-half minute quadrangle topographic map.

At <https://water.usgs.gov/wsc/glossary.html> is the following:

Channel (watercourse): An open conduit either naturally or artificially created which periodically or continuously contains moving water, or which forms a connecting link between two bodies of water. River, creek, run, branch, anabranch, and tributary are some of the terms used to describe natural channels. Natural channels may be single or braided (see Braiding of river channels). Canal and floodway are some of the terms used to describe artificial channels.

Per Section 2.1.4 of the Town of Black Mountain Land Use Code, a permit is required before work is begun and a permit shall not be issued until the town zoning administrator has provided authorization that the proposed structure is in compliance with the zoning district in which it is located.

Section 1.7.3 (A) of the Town of Black Mountain Land Use Code states that the board of adjustment shall authorize upon application in specific cases such variance from the terms of the town's land use code as will not be contrary to the public interest and where owing to special conditions, a literal enforcement of the provisions of the town ordinances will, in an individual case, result in practical difficulty or unnecessary hardship. Variances are not intended to provide limited relief from regulations in those cases where strict application of a particular requirement will create a practical difficulty or unnecessary hardship prohibiting the use of land in a manner otherwise allowed in the land use code and in a way that the spirit of the town regulations shall be preserved, public safety and welfare secured, and substantial justice done.

Town staff have determined that the applicant's request to hear the variance is in accordance with Section 1.7.1 (A).

TOWN OF BLACK MOUNTAIN
COUNTY OF BUNCOMBE

BEFORE THE BLACK MOUNTAIN
BOARD OF ADJUSTMENT

In the Matter of the Application of)
Michael DeLang and Sandra Geisel)
For a Variance for Property at 115 East St)
PIN No. 0710-41-7251.00000)
_____)

ORDER

THIS CAUSE, coming on before the Board of Adjustment for the Town of Black Mountain on November 21, 2024, upon the application of Michael DeLang and Sandra Geisel for a setback variance to reduce the rear property line to convert a garage into a secondary dwelling and to reduce the side property line to expand the use of a legally non-conforming accessory structure at 115 East Street in Black Mountain, PIN #0710-41-7251.00000, which is Plat Book 6412 at Page 1246, Buncombe County Registry.

Michael DeLang and Sandra Geisel appeared to present their case.

Ryan Queen was approved as a party with standing.

Wesley Barker, Town Clerk, and Russell Cate, Zoning Administrator, appeared for the Town staff; Brian Gulden attended as counsel to the board, and five members of the Board of Adjustment were in attendance.

The Board of Adjustment, having heard and considered the testimony of town staff, the Applicant, and parties with standing and having considered all the evidence presented by the town staff, the Applicant, and parties with standing, the statements and arguments of the Applicant and parties with standing, makes the following.

FINDINGS OF FACT

1. The Board of Adjustment has jurisdiction over this matter pursuant to Section 1.7.3 of the Land Use Code (the "LUC").
2. Proper notice of this meeting and hearing of the Board of Adjustment was provided as required by the Town ordinances and the state law.
3. Applicants are owners of the property located at 115 East Street, Black Mountain, North Carolina, which has the current PIN number of 0710-41-7251.00000 as shown on the Buncombe County tax maps, also being Plat Book 6412 at Page 1246, Buncombe County Registry.
4. The property is zoned UR-8.

5. In the UR-8 zoning district, there are building setbacks established in the Land Use Code of 15 feet for location of structures from the rear property line (Section 4.6.3.3 of the LUC) and 5 feet from side and rear property lines for accessory structures (Section 4.5.4 of the LUC).

6. The Applicants purchased the property in May of 2024.

7. In August of 2024, the Applicants were made aware that they did not own a five-foot strip of land behind their property.

8. The Applicants desire to convert the existing garage structure into a secondary dwelling and expand the use of the existing accessory structure into an office and workout space.

9. The existing garage meets the setback requirements for accessory structures but not for a dwelling.

10. The existing accessory structure sits 3 feet from the side property line and is legally non-conforming.

11. The Applicant proposes to reduce the rear setback from fifteen feet to seven feet to convert the garage structure into a secondary dwelling and to reduce the side setback from five feet to three feet to expand the use of the accessory structure. .

12. To be granted a variance, the Applicant is required to prove all the following:

(1) 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.

(2) 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.

(3) 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.

(4) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved. (N.C.G.S. Section 160D-705; Section 1.7.3.E. of the LUC).

13. There are unnecessary hardships in that the Applicants purchased the property under the belief that they had enough room to pursue their projects without the need for a variance and have since learned after purchasing and closing on the property that they do not own the five-foot strip behind their parcel.

14. The hardship results from conditions that are peculiar to the property as the buildings are already existing and there is the odd five-foot strip behind the property that was not known

about until after the Applicants closed on the property.

15. The hardship did not result from actions taken by the Applicants or the property owner in that the Applicants purchased the property thinking they owned the five-foot strip and would have enough room to do their intended projects and found out after closing that they did not own the five-foot strip and therefore, that took away land that they thought they had to pursue their projects.

16. The requested variance is consistent with the spirit, purpose, and intent of the ordinance such that public safety is secure and substantial justice is achieved because it allows the property owner to use their property for a legal purpose.

BASED UPON THE FOREGOING FINDINGS OF FACT, THIS BOARD by a vote of 5 to 0 concludes that the Applicants should be granted a variance to reduce the rear setback from fifteen feet to seven feet to convert a garage into a secondary dwelling and to reduce the side setback from five feet to three feet to expand the use of an accessory structure.

IT IS NOW, THEREFORE, ORDERED, that the Applicants are granted a variance reducing the rear setback of 115 East Street from fifteen feet to seven feet and reducing the side setback of 115 East Street from five feet to three feet. .

This the _____ day of _____, 2025.

LAUREN DODGIN, Chairman

If you are dissatisfied with the decision of this Board, an appeal may be taken to the Superior Court of Buncombe County within 30 days after the date this order is served on you. See Section 1.7.5 of the Land Use Code., Appeals from Decisions of the Board of Adjustment, in the Town of Black Mountain Code of Ordinances.

TOWN OF BLACK MOUNTAIN
COUNTY OF BUNCOMBE

BEFORE THE BLACK MOUNTAIN
BOARD OF ADJUSTMENT

In the Matter of the Application of)
NNN REIT, LP For a)
Variance for Property at 200 NC 9 Highway)
PIN No. 0619-35-4293.00000)
_____)

ORDER

THIS CAUSE, coming on before the Board of Adjustment for the Town of Black Mountain on November 21, 2024, upon the application of NNN REIT, LP to remove the stream buffer and transitional area requirements for property at 200 NC 9 Highway in Black Mountain, PIN #0619-35-4293.00000, which is Plat Book 5117 at Page 0072, Buncombe County Registry.

Kevin Maruer of Kimley-Horn and Josh Harley of Circle K appeared to present their case.

Jon Brooks, Laurie Brooks, and Scott Roy were approved as parties with standing.

Wesley Barker, Town Clerk, and Russell Cate, Zoning Administrator, appeared for the Town staff; Brian Gulden attended as counsel to the board, and five members of the Board of Adjustment were in attendance.

The Board of Adjustment, having heard and considered the testimony of town staff, the Applicant, and parties with standing and having considered all the evidence presented by the town staff, the Applicant, and parties with standing, the statements and arguments of the Applicant and parties with standing, makes the following.

FINDINGS OF FACT

1. The Board of Adjustment has jurisdiction over this matter pursuant to Section 1.7.3 of the Land Use Code (the "LUC").
2. Proper notice of this meeting and hearing of the Board of Adjustment was provided as required by the Town ordinances and the state law.
3. Applicants are engineer and leasee of the property located at 200 NC 9 Highway, Black Mountain, North Carolina, which has the current PIN number of 0619-35-4293.00000 as shown on the Buncombe County tax maps, also being Plat Book 5117 at Page 0072, Buncombe County Registry.
4. The property is zoned HB-8.
5. The property is 1.6 acres.

6. The property was formerly used as a bank.
7. The Applicants propose to demolish the existing structure and construct a gas station with convenience store.
8. The Stream Buffer Protection ordinance requires a stream buffer on either side of watercourse depicted as a solid blue line on the most recent USGS map and is measured thirty feet horizontally from the top of the streambank or watercourse in a direction perpendicular to the stream flow (Section 20-382 of the Code of Ordinances).
9. The Stream Buffer Protection ordinance also requires a transitional area of twenty feet immediately landward of the stream buffer (Section 20-383 of the Code of Ordinances).
10. There is an exception that would allow the stream to be piped and would therefore not have to meet the stream buffer and transitional area requirements (Section 20-385 (6) of the Code of Ordinances).
11. The Applicants noted that there is a grate inlet already on the site that is collecting downstream and there is another inlet collecting upstream and the entire area gets captured by at least a ten-year storm.
12. The Applicants have not been able to locate the stream on the most current USGS map nor have they been able to locate a stream on the property per an on-site study conducted by Kimley-Horn.
13. The stream buffer requirements would cause the elimination of the back driveway to Black Mountain Avenue and cause a reduction in the drive aisle widths.
14. The new site will meet all stormwater requirements.
15. To be granted a variance, the Applicant is required to prove all the following:
 - (1) 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.
 - (2) 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.
 - (3) 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.
 - (4) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is

achieved. (N.C.G.S. Section 160D-705; Section 1.7.3.E. of the LUC).

16. There are unnecessary hardships because while there is an ephemeral stream on the property, it is not a blue line stream and the buffer requirements would cause an issue with internal queuing.
17. The hardship results from conditions that are peculiar to the property as the property has already been developed as well as the surrounding properties that have already been developed.
18. The hardship did not result from actions taken by the Applicants or the property owner in that the property is already existing and developed.
19. The requested variance is consistent with the spirit, purpose, and intent of the ordinance such that public safety is secure and substantial justice is achieved because it allows for additional measures to be taken to treat stormwater and prevent more impervious surface from being added.

BASED UPON THE FOREGOING FINDINGS OF FACT, THIS BOARD by a vote of 5 to 0 concludes that the Applicants should be granted a variance to remove the stream buffer and transitional area requirements.

IT IS NOW, THEREFORE, ORDERED, that the Applicants are granted a variance removing the stream buffer and transitional area requirements from 200 NC 9 Highway.

This the _____ day of _____, 2025.

LAUREN DODGIN, Chairman

If you are dissatisfied with the decision of this Board, an appeal may be taken to the Superior Court of Buncombe County within 30 days after the date this order is served on you. See Section 1.7.5 of the Land Use Code., Appeals from Decisions of the Board of Adjustment, in the Town of Black Mountain Code of Ordinances.