



TOWN OF BLACK MOUNTAIN BOARD OF ADJUSTMENT

July 17, 2025

REGULAR MEETING AGENDA

Time: 6:00 PM

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

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 Conserve Resources; print only when necessary.

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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 June 26, 2025, as written [or as amended]**
 4. **OLD BUSINESS**
 5. **NEW BUSINESS**
 - 5.A. **Approval of Order - 500 Blue Ridge Road Variance**

5.B. Variance Request - 15 Avena Street

5.C. Special Use Request - 399 Blue Ridge Road

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, March 20, 2025, 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

Absent:

David Barley

Staff:

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

The meeting was called to order at 6:02 p.m. and duly constituted and opened for business with a quorum of five (5) regular members.

II. ADOPTION OF AGENDA

Nicole Stallings made a motion to adopt the agenda as presented. The motion was approved by consensus by a vote of 5-0.

III. ADOPTION OF MINUTES

Chloe Brown made a motion to adopt the minutes of April 17, 2025, as written. The motion was approved by consensus by a vote of 5-0.

IV. OLD BUSINESS

None.

V. NEW BUSINESS

1. Variance Request – 500 Blue Ridge Road and 99999 Blue Ridge Road

Chair Lauren Dodgin read the opening statement. Jennifer Tipton swore in all parties wishing to participate in the hearing. John Hines said that he knows one of the applicants but does not have any favored opinion or relationship that would cause a conflict of interest.

Russell Cate provided the board with the staff report of the variance request. The applicant is seeking a variance to be exempt from stream buffer regulations requiring a 30' buffer horizontally from each side of the top of the bank of the stream and an additional 20' buffer on each side of the top of the bank for the two unnamed tributaries as they do not exist. The potential buyer is in the due diligence phase of the purchase. Mr. Cate went over the purpose of the stream buffer requirements and also mentioned the eight exceptions that are allowed. Both properties are zoned TR-4 and are gently sloped. Mr. Cate also spoke about the USGS clip in his staff report and that it one hundred percent matches the Buncombe County GIS streams and river layer and applied to all watercourses. There were no questions from the board.

Board of Adjustment Regular Meeting
June 26, 2025

Murphy Fletcher of Maguire, Woods, and Bissette and attorney for the applicant, gave a brief opening statement. Ms. Fletcher stated that there are no water courses where the two lines are demonstrated on both the USGS map and the Buncombe County GIS stream and river layer. There are two reports, one from Hart and Hickman and the other from the Army Corps of Engineer, stating that there are no watercourses. The stream buffer requirements would cause unnecessary hardship as it would restrict the development of the parcel even though the water courses do not exist. Removing the regulations would not undermine the ordinance as the water courses do not exist and there is no other public harm.

Danielle Clark, with Hart and Hickman, appeared as a witness for the applicant. Ms. Clark has a Bachelor of Science in Biology and a Masters in Environmental Management. Ms. Clark has spent the last eleven years working as a wetlands specialist. She received her wetland certification in 2020. Ms. Clark said that Hart and Hickman is an environmental consulting firm. Ms. Fletcher asked that Ms. Clark be admitted as an expert witness and the board admitted Ms. Clark. Ms. Clark said that she attended the Army Corps site visit and that no streams or water courses were revealed other than the Swannanoa River. Both Hart and Hickman and the Army Corps of Engineers conducted site surveys. It is Ms. Clark's opinion that the USGS map is incorrect and that there are no streams or water courses in that location. Chair Dodgin asked about the Army Corps of Engineers wetland data sheets that do show some type of wetland. Ms. Clark confirmed that there is a wetland on the site, but it is not a water course. The Hart and Hickman survey was conducted in December of 2024, and the Army Corps of Engineers survey was conducted in March of 2025.

Elena Terra, 514 Blue Ridge Road, asked about the row of trees along the border of the property and how close the applicant would be able to build to the property lines. Chair Dodgin explained that the question is outside of their purview and that they can only consider the variance that has been requested.

Jeff Hall, 414 Blue Ridge Road, asked if there were aqua ducts on the property. Mr. Hall said that he has been told that there are underground areas of water on the property. Mr. Cate stated that the stream buffer ordinance does not speak to aqua ducts or underground water. Mr. Hall stated that there has been other property in the town that was not able to be built on due to aqua ducts.

Chair Dodgin recalled Ms. Clark. Ms. Clark stated that they did not drill for ground water and only looked at the surface. It is possible for streams to be located underground but they are not regulated by the Army Corps of Engineers. Ms. Clark stated that ground water can be anywhere. The board decided that moving forward, all water related items will be referred to as water courses.

Ms. Fletcher gave a brief closing statement. She said that the applicant meets the requirements for a variance request. She said that based on the ordinance and the staff report, there is nothing on the property where the lines are shown to meet the definition of a water course. Ms. Fletcher said that they have provided sufficient evidence that there are no streams on the property and the

Board of Adjustment Regular Meeting
June 26, 2025

property would be almost undevelopable and restrict the use of the property. She again said that they would not be undermining the environmental protections.

Chloe Brown made a motion to go into recess for deliberations at 6:48 p.m. Ms. Stallings stated that she drove by the property both before and after a rain event and did not notice any water course or running water. Mr. Hines said that the property does get wet after a rain event but does not stay wet or have running water. Chair Dodgin said that she doesn't take this request lightly, but that the applicant has done their due diligence and that while there is a wetland on the property, there are no other streams or water courses connecting to the wetlands. The Swannanoa River is closest navigable water source.

John Hines made a motion to close the evidentiary hearing. The motion was approved by consensus by a vote of 5-0.

The board found the following:

1. The board found by a vote of 5-0 that there are unnecessary hardships that would result from the strict application of the ordinance because restrictions imposed by the ordinance would render the land unusable.
2. The board found by a vote of 5-0 that the hardship does result from conditions that are peculiar to the property because of the location and topography and the incorrect data on the USGS map.
3. The board found by a vote of 5-0 that the hardship did not result from actions taken by the applicant as the data from the USGS map is incorrect.
4. The board found by a vote of 5-0 that 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 as it does not undermine the purpose of the stream buffer ordinance.

Nicole Stallings made a motion to grant the variance as requested. The motion was approved by consensus 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 7:01 p.m.

Prepared by:

Lauren Dodgin, Chair

Board of Adjustment Regular Meeting
June 26, 2025

Jennifer Tipton, Senior Admin

In the Matter of the Application of)
Forge Trust f/b/o Pamela K. Collins)
And Donald and Pamela Collins, individually) ORDER
For a Variance for Property at)
500 Blue Ridge Road and)
And 99999 Blue Ridge Road)
PIN No. 0609-81-9540.00000)
PIN No. 0609-91-2512.00000)

THIS CAUSE, coming on before the Board of Adjustment for the Town of Black Mountain on June 26, 2025, upon the application of Forge Trust f/b/o Pamela K. Collins and Donald and Pamela Collins, individually, to be exempt from requiring a thirty-foot buffer horizontally from each side of the top of the bank of the stream and an additional twenty-foot buffer on each side of the top of the bank of the stream for two unnamed tributaries because the unnamed tributaries do not exist at 500 Blue Ridge Road in Black Mountain, PIN #0609-81-9540.00000, which is Plat Book 6359 at Page 1730, and 99999 Blue Ridge Road in Black Mountain, PIN #0609-91-2512.00000, which is Plat Book 4688 at Page 0250, Buncombe County Registry.

Murphy Fletcher of Maguire, Woods, and Bisette, appeared as the representative for the Applicants to present their case.

Jennifer Tipton, Senior Admin, and Russell Cate, Zoning Administrator, appeared for the Town staff and five members of the Board of Adjustment were in attendance.

The Board of Adjustment, having heard and considered the testimony of town staff and the representative for the Applicant, and having considered all the evidence presented by the town staff and the representative for the Applicant and the statements and arguments of the representative of the Applicant, 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 Forge Trust f/b/o Pamela K. Collins and Donald and Pamela Collins, individually, owners of the property located at 500 Blue Ridge Road, Black Mountain, North Carolina, which has the current PIN number of 0609-81-9540.00000 as shown on the Buncombe County tax maps, also being Plat Book 6359 at Page 1730,

Buncombe County Registry.

4. Applicants Forge Trust f/b/o Pamela K. Collins and Donald and Pamela Collins, individually, owners of the property located at 99999 Blue Ridge Road, Black Mountain, North Carolina, which has the current PIN number of 0609-91-2512.00000 as shown on the Buncombe County tax maps, also being Plat Book 4688 at Page 0250, Buncombe County Registry.
5. The properties are zoned TR-4.
6. The properties are 4.59 and 2.93 acres, respectively.
7. The property at 500 Blue Ridge Road has a single-family residence and three accessory structures.
8. The property at 99999 Blue Ridge Road is a vacant piece of land.
9. The Applicants have a potential buyer for the properties that is currently in the due diligence phase of the purchase contract.
10. 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).
11. 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).
12. 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).
13. The representative for the Applicants presented Danielle Clark, as an expert witness.
14. Danielle Clark is an employee of Hart and Hickman, an environmental consulting firm, with a specialty in wetland designation.
15. Danielle Clark has a Bachelor of Science in Biology and a Masters in Environmental Management.
16. Danielle Clark was admitted as an expert witness.
17. Hart and Hickman conducted a site survey of the property in December of 2024 and found no streams or water courses where the lines are demonstrated on the USGS map and the Buncombe County GIS stream and river layer.
18. The Army Corps of Engineers conducted a site survey of the property in March of 2025 and found no streams or water courses where the lines are demonstrated on the USGS map and the Buncombe County GIS stream and river layer.

19. The closest navigable water was determined as the Swannanoa River.
20. 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).
21. There are unnecessary hardships because the ordinance because restrictions imposed by the ordinance would render the land unusable.
22. The hardship results from conditions that are peculiar to the property because of the location and topography and the incorrect data on the USGS map.
23. The hardship did not result from actions taken by the Applicants or the property owner in that the data from the USGS map is incorrect.
24. 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 as it does not undermine the purpose of the stream buffer ordinance.

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 be exempt from requiring a thirty-foot buffer horizontally from each side of the top of the bank of the stream and an additional twenty-foot buffer on each side of the top of the bank of the stream for the two unnamed tributaries that do not exist.

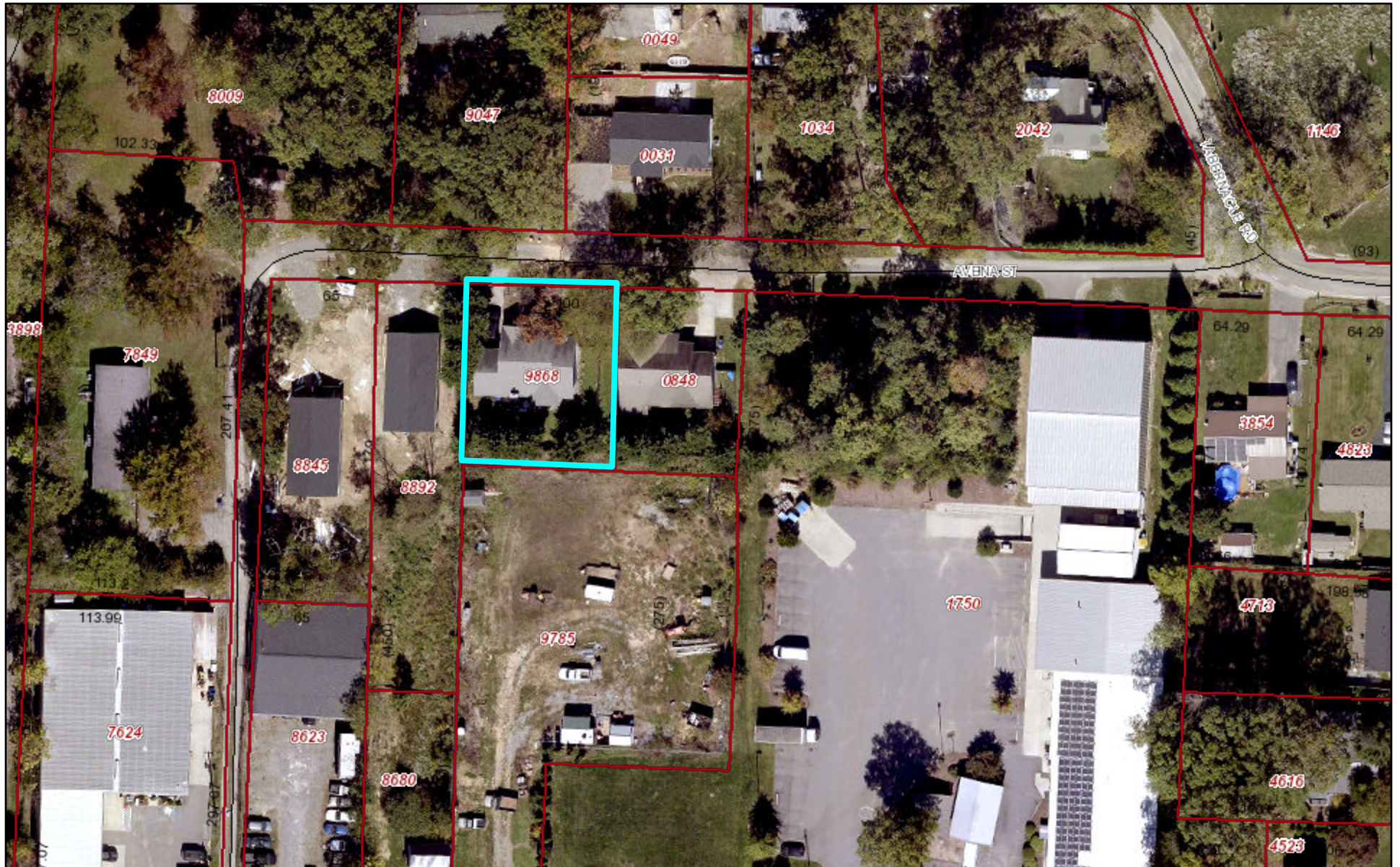
IT IS NOW, THEREFORE, ORDERED, that the Applicants are granted a variance exempting them from requiring a thirty-foot buffer horizontally from each side of the top of the bank of the stream and an additional twenty-foot buffer on each side of the top of the bank of the stream for the two unnamed tributaries that do not exist for 500 Blue Ridge Road and 99999 Blue Ridge Road.

This the _____ day of _____, 2025.

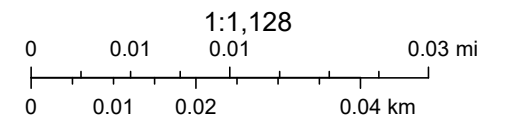
LAUREN DODGIN, Chairman

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.

Buncombe County



June 30, 2025





Planning & Zoning Applications: #VAR-25-0003

Overview

Type: Variance

Submitted: 06-27-25, 1:01pm EDT

Address: 15 AVENA ST, BLACK MOUNTAIN, NC 28711

Form Submission

Owner:

David and Brooke Cherry
15 Avena St.
Black Mountain NC 28711
dc64698@outlook.com, (910) 265-9785

Section Number(s): 4.4

Section Title(s): PROVISIONS GOVERNING ALL LOTS

Subsection letter(s) and/or number(s): 4.4.3 - B,C

Subsection Title(s): Setbacks, corner lots and double frontage lots.

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): :

Current zoning calls for a 30' setback from the road. Homeowner is repairing from Helene damage and would like to build their porch to a 13' depth protruding from the house. This would make the deck band 26'6" from the road and the overhang of the roof would be 24'8".

This will not affect any other property and there are many structures in Black Mountain that are much closer to the road than this.
Parcel Number: 060943986800000

Current Zoning: OI-6

Acreage: 0.17

Average Slope %: 5

Use of Property: Residential

Petitioner Signature:

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. :

The zoning of this property was set before the neighborhood was developed. Many other residential areas close to this property have much less of a setback and it is unfair that the homeowners cannot improve their home as other residents have.

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.:

The zoning of this property was set before the neighborhood was developed. Many other residential areas close to this property have much less of a setback and it is unfair that the homeowners cannot improve their home as other residents have.

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.:

The zoning was not revealed to the homeowner at time of purchase and they did not know how the antiquated zoning for the property would limit their ability to improve their home.

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.:

This request for variance will not affect neighbors or traffic.

Mail notice of meeting to property - Logged by Jennifer Tipton at 07-08-25, 1:40pm

I confirm these have all been mailed to the related property owners. : Yes

List of Property Owners: -

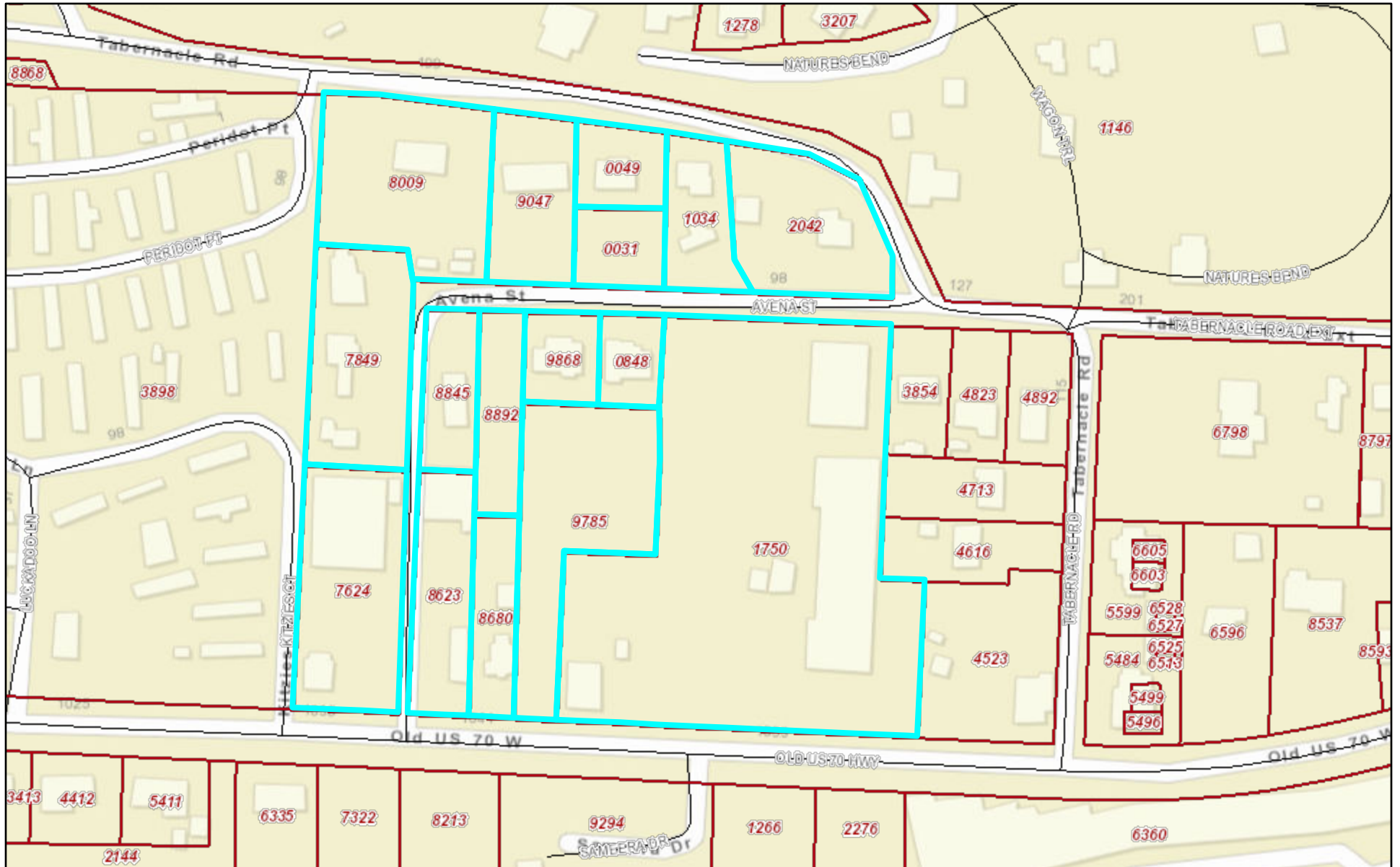
Parcel Posted - Logged by Jennifer Tipton at 07-08-25, 1:41pm

I confirm the parcel has been posted: Yes

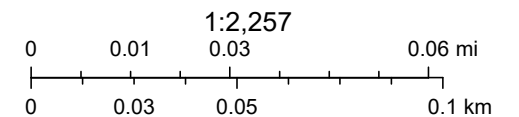
Date Parcel was Posted: July 2, 2025

Notes: -

Buncombe County



June 30, 2025



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: **July 2, 2025**
TO: **PROPERTY OWNER**
FROM: **TOWN OF BLACK MOUNTAIN
ZONING ADMINISTRATOR**

ADDRESS OF PROPOSED VARIANCE:

15 Avena Street

PIN #: **0609-43-9868.00000**

CURRENT ZONING CLASSIFICATION: **OI-6 (office and institutional)**

THIS PROPERTY IS CURRENTLY USED FOR THE PURPOSE OF:

residential

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

Chapter 4, Section 4.4.3 (B and C) of the Town of Black Mountain Land Use Code

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

Current zoning calls for a 30' setback from the road. Homeowner is repairing from Helene damage and would like to build their porch to a 13' depth protruding from the house. This would make the deck band 26'6" from the road and the overhang of the roof would be 24'8".

An evidentiary hearing will be held on Thursday, July 17, 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.

4.4.3 Setbacks, corner lots and double frontage lots.

- A. Yard and setback requirements shall be met unless variance is granted by the board of adjustment.
- B. Minimum setbacks shall be measured horizontally from the origin of the setback as the right-of-way, or property boundary, to the nearest portion of the building or structure.
- C. If the property line extends into a roadway or highway, then the setback line shall be measured from the edge of the roadway or back of the curb when computing setback requirements.
- D. Wherever right-of-way has not been established, setback shall be measured from the outer edge of the existing drainage ditch running parallel and adjacent to the road, or four feet off the edge of pavement where no ditch exists, or from the edge of the traveled area on an unpaved road.
- E. Public rights-of-way or easements for streets and roads shall not be considered a part of a lot or open space, or as front, side, or rear yard for the purpose of meeting yard requirements. Driveways, parking areas, loading zones, sidewalks, or greenways may encroach or be included within a yard setback without affecting the setback requirements (see also 4.4.7).
- F. In developed areas where more than three structures already exist, the setback may be determined by the average setback on already built upon lots located wholly or in part within the same block and zoning district and fronting the same street. In such cases, the setback on such a lot may be less than the required setback but not less than the average of the existing setbacks on the developed lots. However, in no case shall setbacks be less than 15 feet, except in the CB, central business district, where the minimum setback is 12 feet.
- G. No building or structure shall be placed within a roadway or highway right-of-way, except as otherwise provided in these regulations.
- H. Any structure on a corner lot shall comply with the minimum setback (front yard) requirements of the street which it faces, and shall comply with 50 percent of the minimum front yard setback requirements, if applicable, on any other street which the corner lot abuts. In case of doubt as to which street a structure faces, or if a structure is built so as not to face any street, the zoning administrator shall determine which setback, side yard and rear yard requirements apply.
- I. For lots having frontage on two or more streets, but not located on a corner, the minimum front yard shall be provided on each street in accordance with the applicable district(s).
- J. Allowable encroachments into required setbacks. The following may encroach upon required setbacks as set forth below unless specifically prohibited elsewhere in this chapter.
 - 1. Sills, cornices, and similar ornamental features projecting from the principal building may encroach up to 18 inches into any required setback.
 - 2. Bay windows, balconies, and similar features projecting from the principal building may encroach up to three feet into any required setback.
 - 3. Decks, steps, uncovered porches, patios, and terraces may encroach into a required side or rear setback, but no closer than six feet to the side or rear property line.
 - 4. Fences and walls.
 - 5. If a handicapped accessibility or life safety feature cannot meet this requirement due to the location of an existing structure or other impeding site feature on a residential lot, the setback requirement shall be waived to the extent necessary to accommodate the accessibility or life safety feature.



DRAWINGS PROVIDED BY:
Semper Fi
 Tamara Stillwell
 Designer
 tamara.stillwell@semperfi.com

Max & Brooke Cherry
 15 Avena St.
 Black Mountain, NC 28711

Exterior Perspectives & Elevations

DATE:

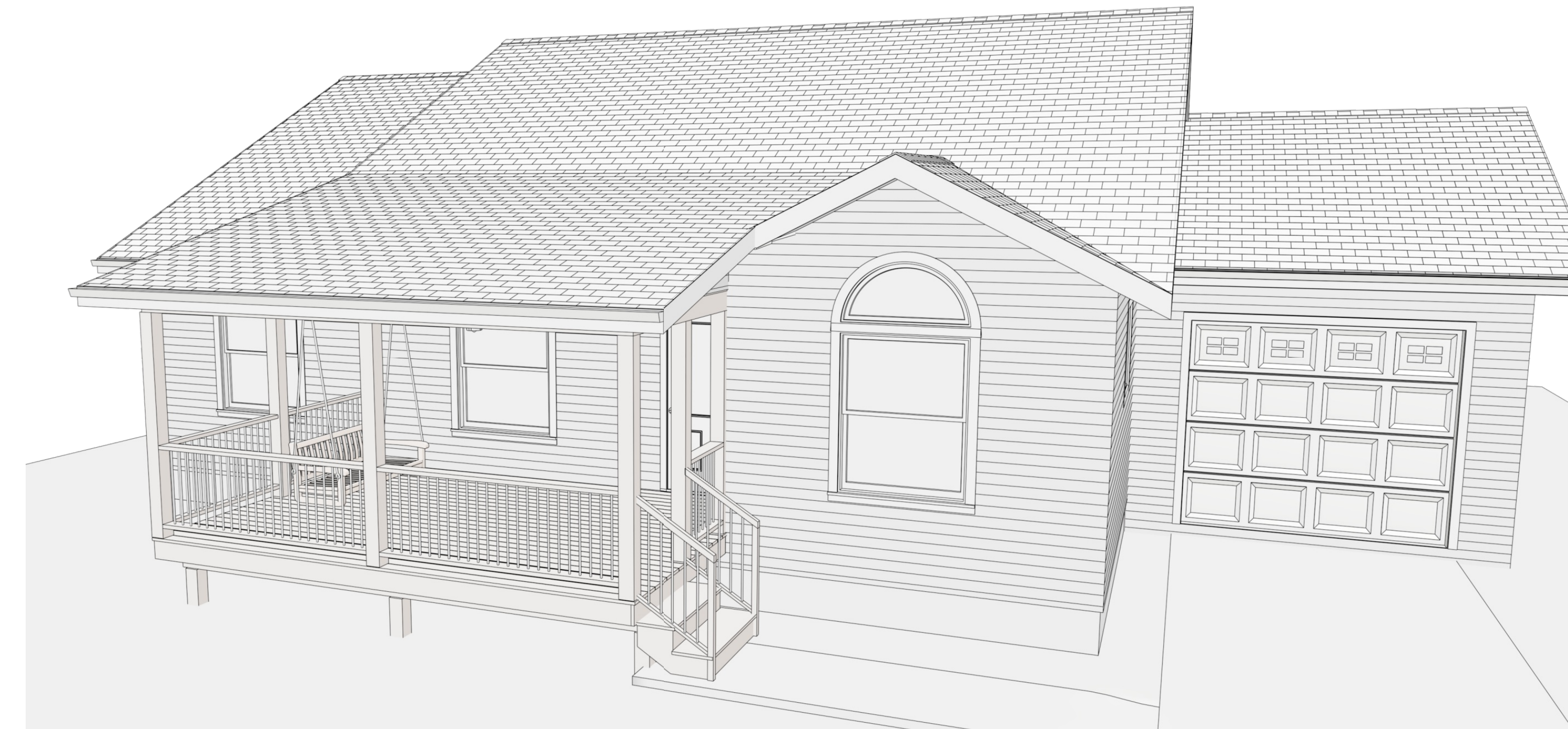
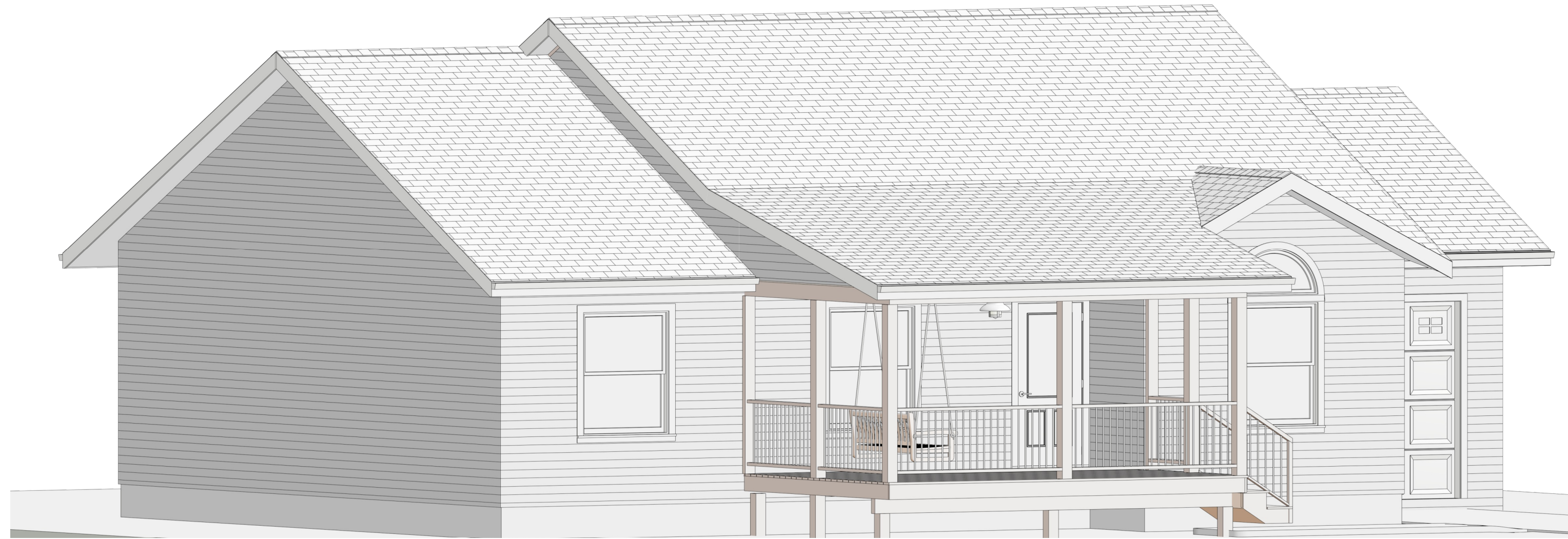
5/29/2025

SCALE:

1/4" = 1'

SHEET:

1

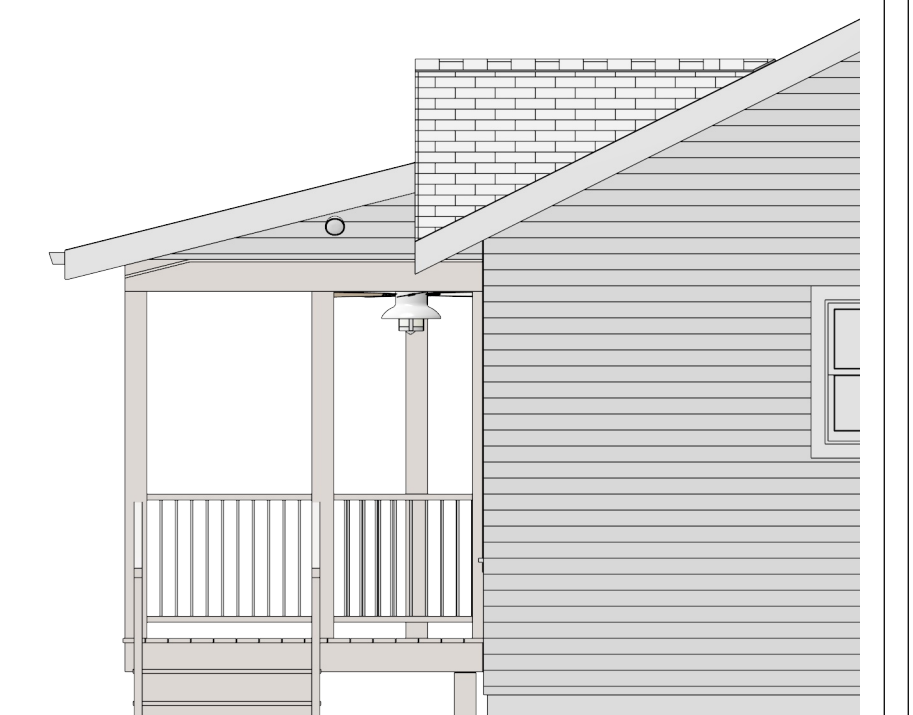


Left Side Exterior Elevation

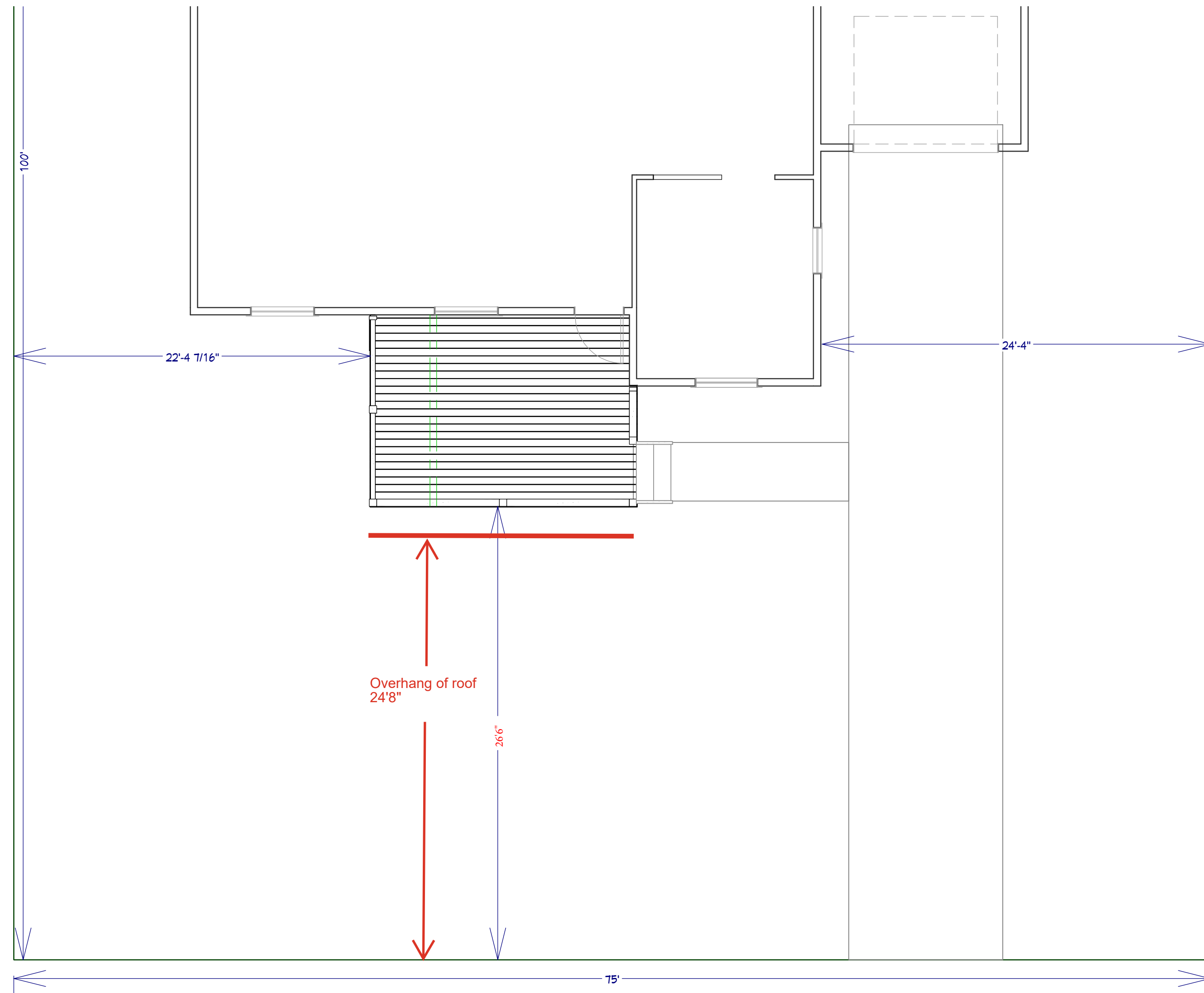
- NOTES:
- New Porch Roof Pitch 3:12
+/- for tie in to existing roof
 - Extending existing porch; ceiling heights based on existing porch measurements
 - Flat finished ceiling.



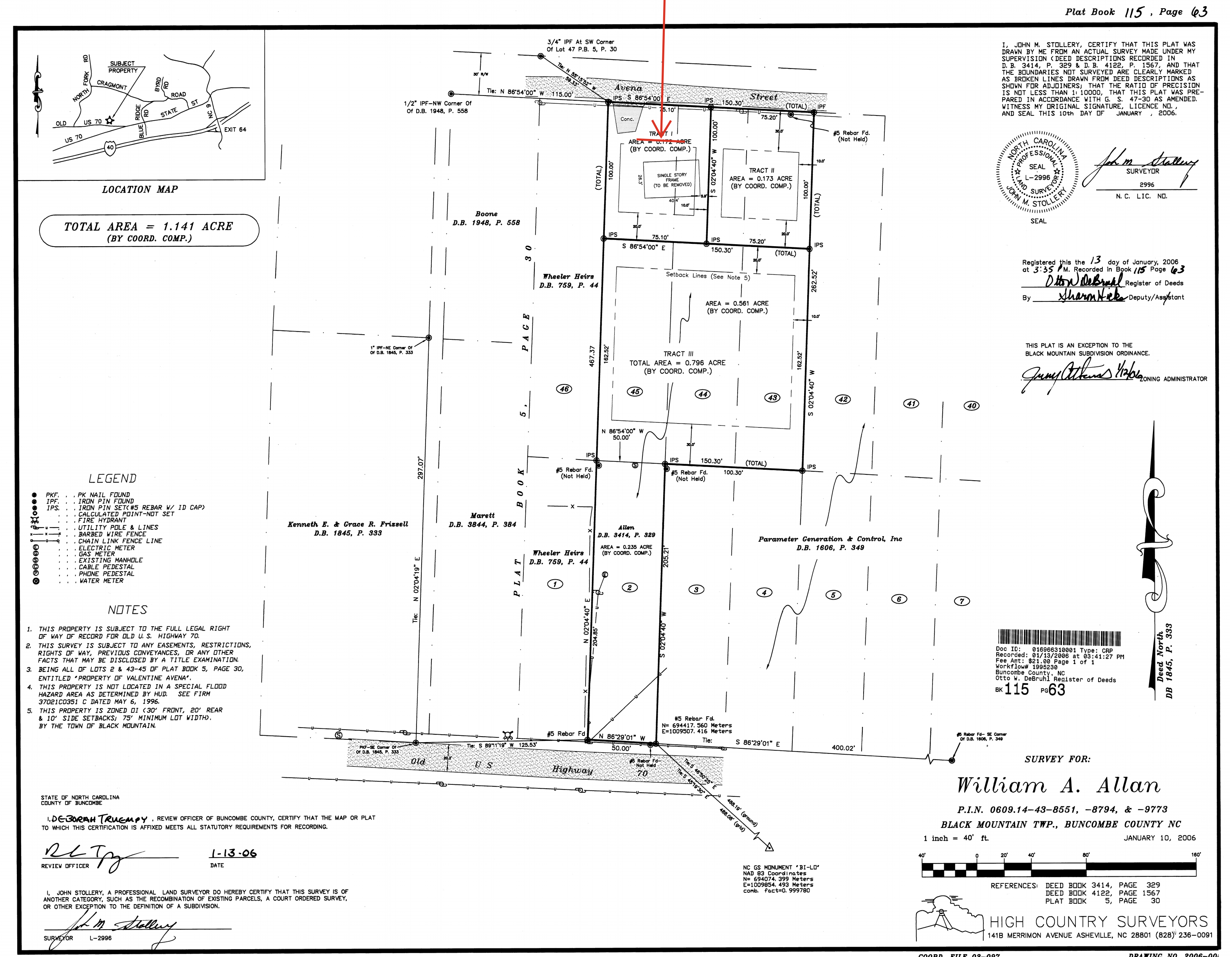
Front Exterior Elevation



Right Side Exterior Elevation



Property Line Dimensions -New Front Porch



Max & Brooke Cherry Property Survey from 2006



DRAWINGS PROVIDED BY:
Semper Fi
 Tamara Stilwell
 Designer
 tamara.stilwell@semperfi.com

Max & Brooke Cherry
 15 Avenida St.
 Black Mountain, NC 28711

Site Plan

DATE:

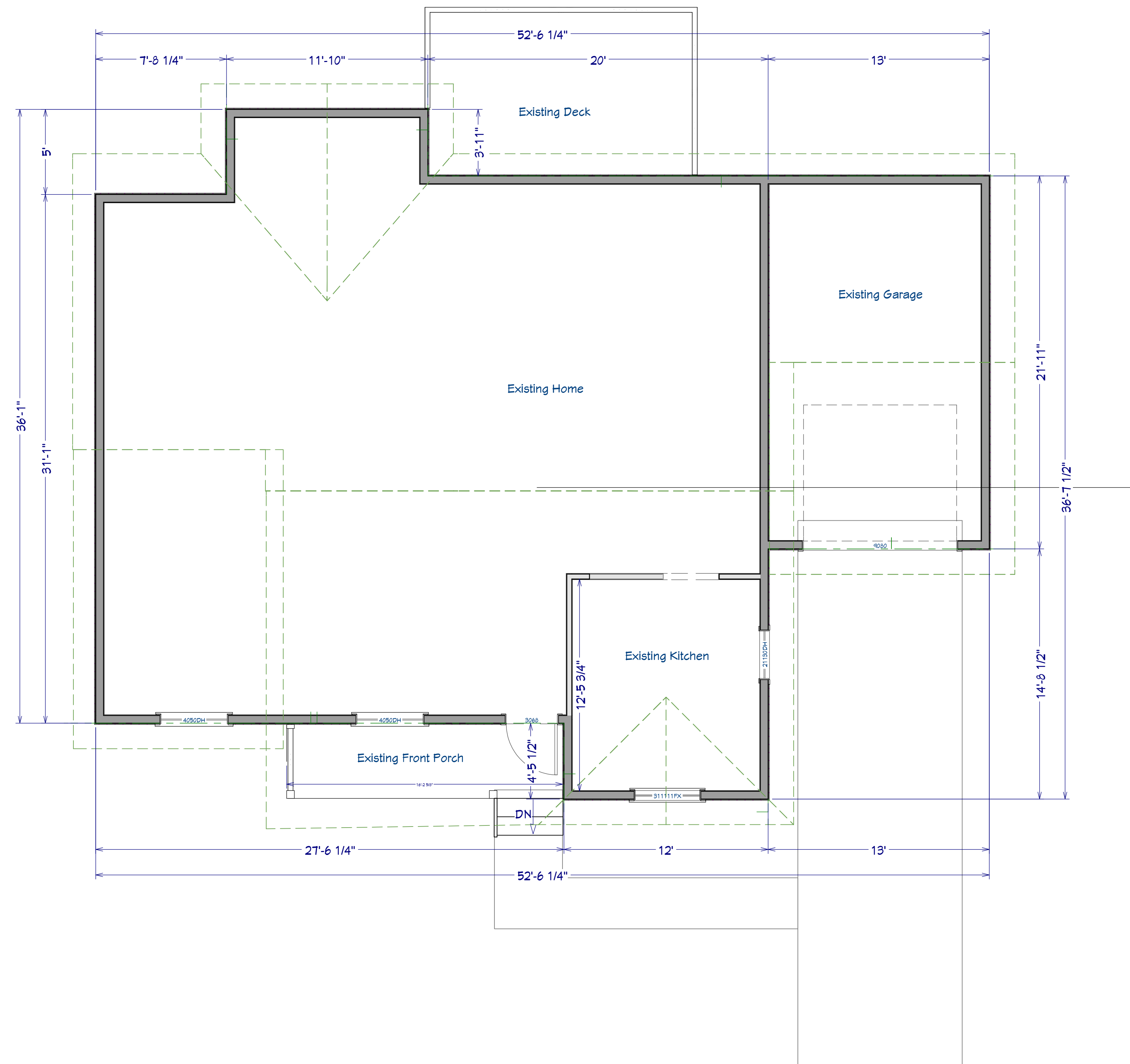
5/29/2025

SCALE:

1/4" = 1'

SHEET:

2



DRAWINGS PROVIDED BY:
Semper Fi
 Tamara Stilwell
 Designer
 tamara.stilwell@semperfi.com

Max & Brooke Cherry
 15 Avena St.
 Black Mountain, NC 28711

As Built -Existing Floor Plan

DATE:
 5/29/2025

SCALE:
 1/4" = 1'

SHEET:
 3



DRAWINGS PROVIDED BY:
Semper Fi
 Tamara Stillwell
 Designer
 tamara.stillwell@sfcustommodeling.com

Max & Brooke Cherry
 15 Avena St.
 Black Mountain, NC 28711

New Floor Plan

DATE:

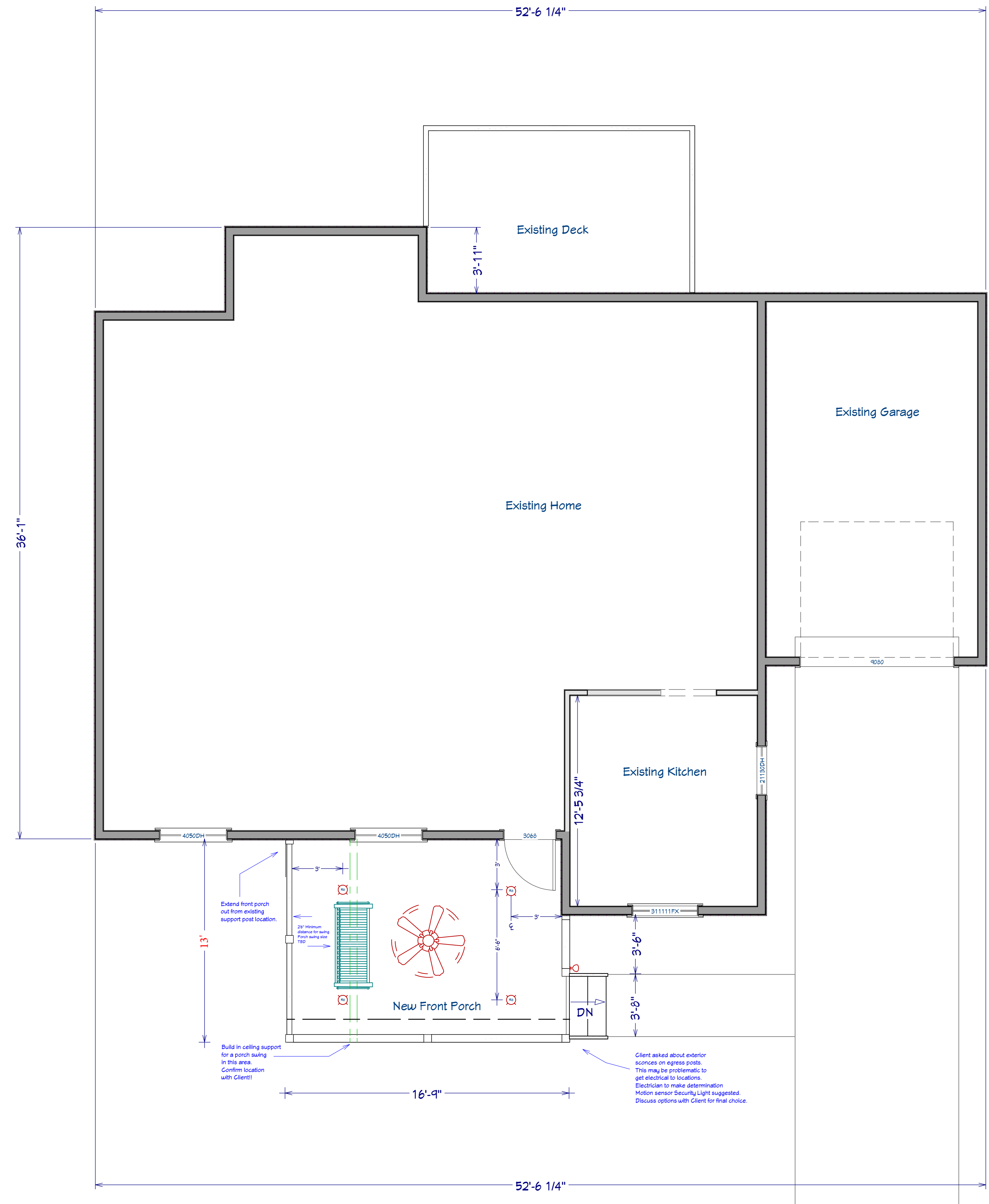
5/29/2025

SCALE:

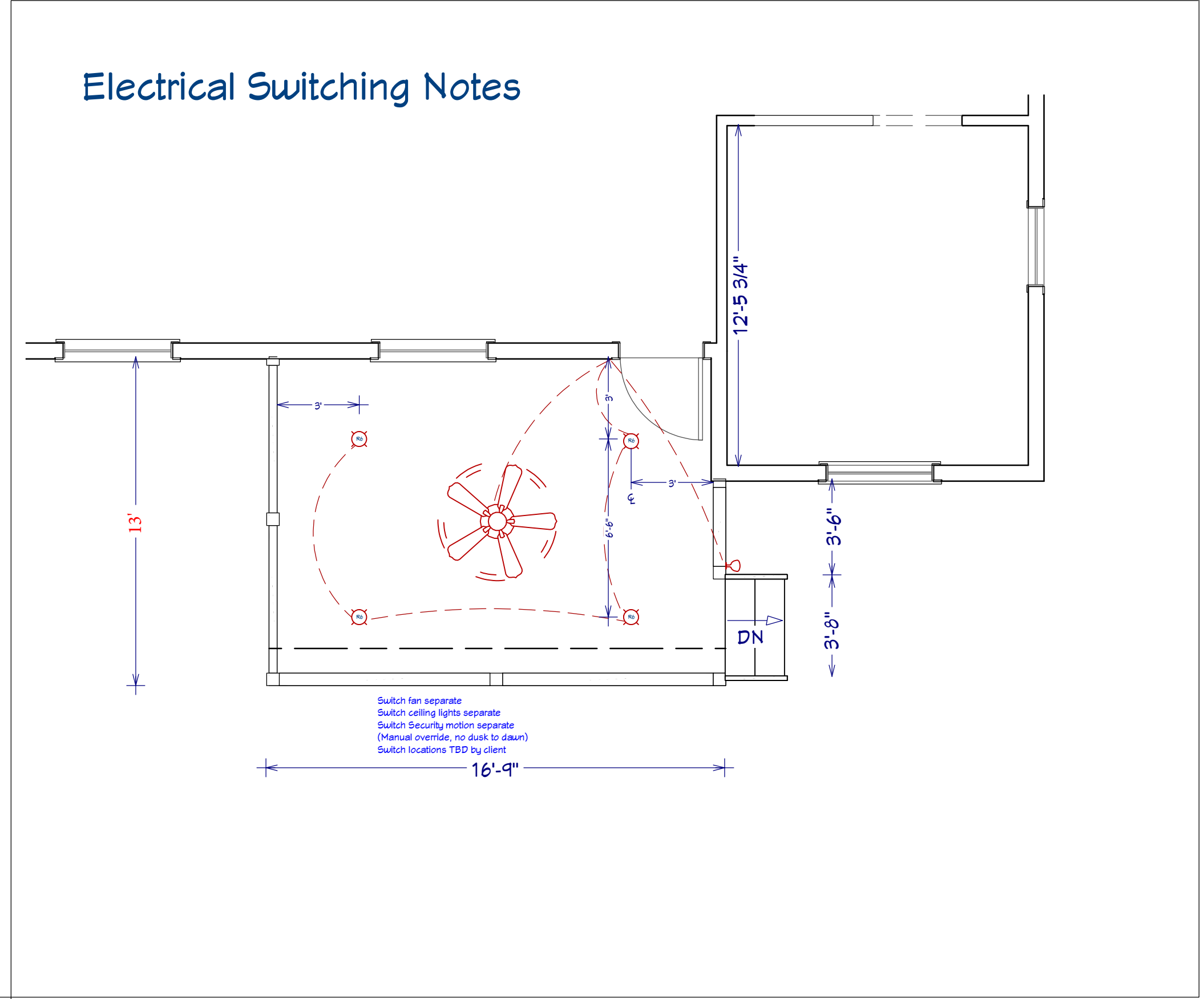
1/4" = 1'

SHEET:

4



Front Porch New Floor Plan



15 Avena Street Buffer Property Owners

<u>Name</u>	<u>Address</u>	<u>City</u>
Bounty and Soul	999 Old US 70 Hwy	Black Mountain
Charles & Debra Cantrell	149 Tabernacle Rd	Black Mountain
Carol Lynn Marrett	718 Rhododendron Ave	Black Mountain
Sydney Kirstin Radford	1042 Old US Hwy 70 W	Black Mountain
WBM1 LLC	3314 Big Neck Rd NW	Ash
Sherry Dotson	17 Avena St	Black Mountain
William A Allan	PO Box 545	Montreat
David & Brooke Cherry	15 Avena St	Black Mountain
Charles & Debra Cantrell	149 Tabernacle Rd	Black Mountain
Charles & Debra Cantrell	149 Tabernacle Rd	Black Mountain
Lauren Presley & Mason Eades	11 Avena St	Black Mountain
Parameter Generation & Control Inc	PO Box 129	Black Mountain
Sara Pizano	14 Avena St	Black Mountain
Warren Overman & Amy Rush	143 Tabernacle Rd	Black Mountain
Aaron Dohy	139 Tabernacle Rd	Black Mountain
Lillian Brown; Matthew Brown; Morgan Holmes; Robert Holmes III	135 Tabernacle Rd	Black Mountain

<u>State</u>	<u>Zip</u>	<u>PIN #</u>
NC	28711	60943762400000
NC	28711	60943784900000
NC	28711	60943862300000
NC	28711	60943868000000
NC	28420	60943884500000
NC	28711	60943889200000
NC	28757	60943978500000
NC	28711	60943986800000
NC	28711	60944800900000
NC	28711	60944904700000
NC	28711	60953084800000
NC	28711	60953175000000
NC	28711	60954003100000
NC	28711	60954004900000
NC	28711	60954103400000
NC	28711	60954204200000

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

Case No: V-25-04

Hearing Date: July 17, 2025

Case Name: 15 Avena St

Procedure: Variance Evidentiary Hearing

Address of Variance Request:

15 Avena St.

Black Mountain, NC 28711

Property ID Number (PIN): 060943986800000

Applicant:

David and Brooke Cherry

15 Avena St.

Black Mountain, NC 28711

Request:

The applicants are seeking a variance from the Office and Institutional (OI-6) zoning district's 30-foot front setback requirement. As part of doing repair of Helene damage, they would like the rebuilt front porch to be 26 feet and six inches from the right of way line. (The right of way line is slightly further back than the property line, and the applicants are complying with the Land Use Code requirement to measure from the further back of the two.) There's a roof overhang that extends one foot and 10 inches into the setback, and code allows such an encroachment of up to one foot and six inches.

Thus, the applicants are seeking a reduction in the front setback requirement of three feet and eight inches.

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 one of the requirements stated in the *Minimum Yard Requirements* portion of **Dimensional Requirements by Zoning District** (which is Section 4.7.15 of Chapter 4 of the Land Use Code): in the Office and Institutional (OI-6) zoning district, the front setback requirement is 30 feet.

Section 4.4.3 of Chapter 4 explains that the setback measurement is taken from the right of way line or the property line, whichever is further back, and that the measurement is "to the nearest portion of the building or structure."

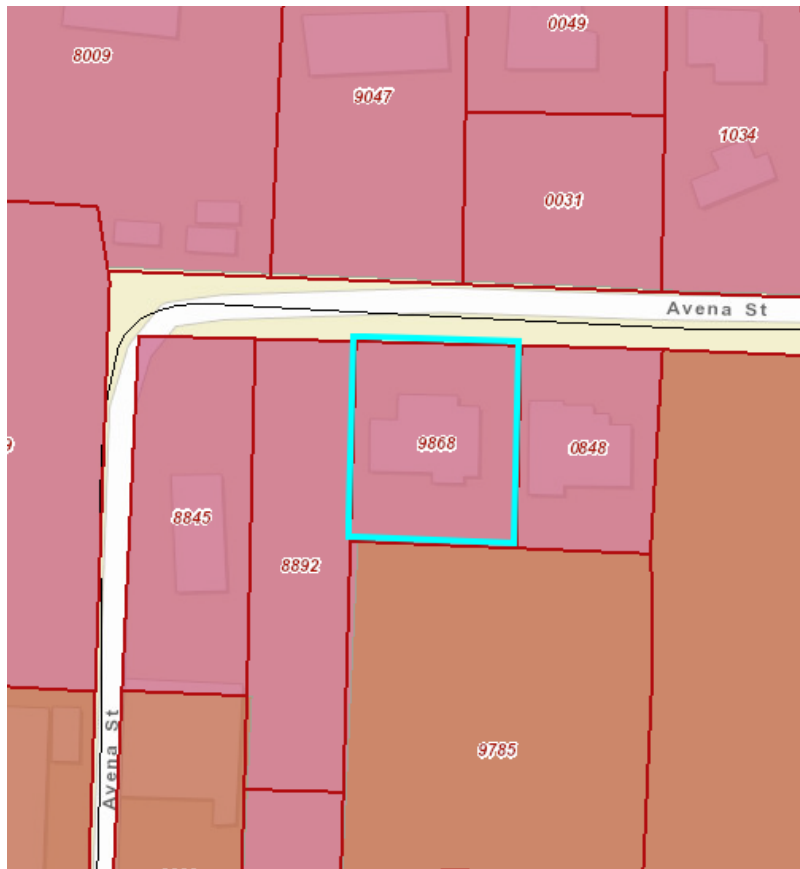
The site plan notes a roof overhang extending one foot and 10 inches into the setback area. Item **J** in Section 4.4.3 of Chapter 4 explains that architectural features like roof overhangs can extend

II. PROCESS – REQUIRED CITY APPROVALS

In addition to this variance, the applicant 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. ZONING AND LAND USE

The property is in the Office and Institutional (OI-6) zoning district. This clip is from Buncombe GIS – purple is OI-6, and orange is Highway Business (HB-8) (**9868** is the subject property):



The *Minimum Yard Requirements* in OI-6 are:

	<u>Residential</u>	<u>Non-Residential</u>
Front:	30 feet	40 feet
Side:	10 feet	30 feet
Rear:	20 feet	30 feet (40 feet if abutting a residential district)

Reference: Section 4.7.15 (Dimensional Requirements by Zoning District) of Chapter 4.

The surrounding lots are:

	North	South	East	West
Adjacent Zoning Designation	OI-6	HB-8	OI-6	OI-6
Adjacent Land Uses	Single-family home	.8-acre lot that has no buildings	Single-family home	Single-family home

The *Purpose and Intent* of the OI-6 zoning district is:

The office and institutional district is established to provide transition between residential and commercial districts; to accommodate a mixture of residential, office, and institutional uses in conditions of good health and safety; to accommodate planned developments that are institutional in nature and which may have multiple buildings and uses within one property; and to protect property values of residential, institutional and professional uses within the district in a way that is mutually beneficial.

Reference: Section 4.7.5 (Office and Institutional District - OI-6) of Chapter 4.

Existing Conditions

According to the Buncombe County Property Record Card for 15 Avena Street, the parcel has a four-bedroom, single family home that has a total finished area of 2,650 square feet. The county lists the lot size as .17 acre. The overall slope of the lot is 7.44 percent (according to <https://www.mapwnc.org/find-slope-for-parcel>).

Below is a clip from Buncombe GIS with the *5 Foot Contours, Stream & River* and *2020 – DFIRM Flood Data* layers turned on (property does not have any USGS watercourses and is not in the 100-year flood zone). **9868** is the subject property. Note: image is *Post Helene 2024*.



Below is a street view of the lot (photo taken on 7/9/2025).



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 July 2, 2025. Legal notice appeared in *Black Mountain News* the weeks of July 10, 2025, and July 17, 2025. The property was posted with a notice listing the time and date of the hearing.

V. ANALYSIS

The context of the variance request is the rebuilding of a front porch. Front porches are common features on homes in the Town of Black Mountain.

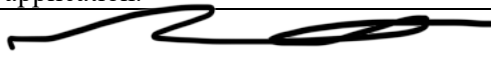
Section 4.4.3 (A) of the Land Use Code states that “Yard and setback requirements shall be met unless a variance is granted by the Board of Adjustment.”

Per Section 2.1.4 of the 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 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 has determined that the applicants' request to hear the variance is in accordance with Section 1.7.1 (A).

SPECIAL USE APPLICATION www.townofblackmountain.org

PROPERTY OWNER INFORMATION		
Owner Name FULLER CENTER DISASTER REBUILDERS		
Owner Address (Number, Street, City, State, ZIP) 10 ARROWHEAD ROAD, DANVERS, MA 01923		
Home Phone	Cell Phone (828) 808- 0873	Email Address nathan@disaster-rebuilders.org
APPLICATION FOR SPECIAL USE		
Application is hereby made to the Zoning Board of Adjustment to issue a Special Use Permit for use of the property described below as a <i>(please provide a brief description of the use)</i> : The project consists of 56 deeply affordable dwellings, the dwellings are to be a mixture of detached single family homes and duplexes.		
PROPERTY INFORMATION		
Parcel Number 0619-00-4776	Current Zoning TR-4	Acreage 9.89
Address 399 BLUE RIDGE ROAD		
Average Slope % 6.37 %	Use of Property VAC LAND	
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	Date 6/20/25	
OFFICE USE ONLY		
Date Received:	Fee: \$600.00 Cash: <input type="checkbox"/> Check: <input type="checkbox"/> # _____ Credit: <input type="checkbox"/>	
Case Number:	Planning Board Meeting Date:	
Planning Board Recommendation:	ZBA Meeting Date:	

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

SPECIAL USE APPLICATION CHECKLIST

I, the petitioner, submit a site-specific development plan containing the following information (Please mark 'N/A' by any requirement that is not applicable and provide a brief statement as to why it is not applicable). Failure to submit a complete application will result in removal from the Zoning Board of Adjustment Agenda.

Master Plan

- Property lines, street and other public rights-of-way lines.
- Topography of the site showing five-foot contours and elevations as well as slopes in excess of 20 percent.
- Natural features, such as wooded areas, water bodies, wetlands, floodplain boundaries and floodway boundaries, with plans to preserve the unique features of the property
- Location and approximate size of all existing and proposed buildings and structures within the site and ownership of abutting properties within 200 feet of the property lines of the proposed development. The location of structures on adjoining properties along the public street shall be depicted in plain view.
- Elevation drawings shall be provided for all sides of the proposed structures including the nature and color of surface treatments.
- Existing and proposed utilities, including water, sewer, electric, telephone, cable and gas.
- Proposed pattern of internal circulation and parking areas, depicted in sufficient detail to evaluate consistency with the specifications and requirements set forth in this code.
- Plans for landscaping and stormwater management.
- Open space areas and active passive recreation areas if applicable.
- Sidewalks or greenway easements shall be provided in locations shown on the adopted comprehensive pedestrian master plan. A fee-in-lieu of construction or dedication of easement may be provided to the town at an equivalent cost to construction upon approval of the town planning board.
- Other requirements as may be considered essential by the planning board for the protection of the public health, safety and welfare.
- Operations on site, including free-standing mechanical equipment, chimneys, storage containers or tanks, water towers or chillers shall not cause excessive noise, vibration, smoke, odors, electrical or radio interference.

N/A - at the moment we do not have exact elevations on the proposed building

N/A - Proposed internal greenway connections are shown in place of sidewalks

N/A - At this moment we have no other requirements suggested by the planning board

N/A - At this moment we have no plans to construct said items.

Landscaping Plan

- Proposed landscape materials.
- Parking lot screening.
- Screening of garbage containers.
- Buffering of adjoining uses.
- Inventory of trees greater than four inches in diameter at breast height by species, size and location.
- Plans to protect existing trees.
- Where trees are removed, plan shall indicate where replacements are to be located.

N/A - No parking lot

N/A - No dumpster

N/A - No tree survey

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

- Wetlands and/or areas supporting wetland plants shall be identified and protected.
- Provide for re-vegetation of all disturbed areas with plant materials.

Conceptual Stormwater Plan

- Indicate where stormwater management practices will be located.
- Management measures controlling the final run-off from the site shall control and treat the difference in stormwater runoff volume leaving the project site between the pre- and post-development conditions for, at a minimum, the one-year, 15-minute storm.
- An approved stormwater management plan will be required prior to issuance of a building permit.

Solid Waste Storage Facilities

- Provided in either in the form of an accessible bulk container or dumpster or individual containers for each dwelling unit.

N/A - No dumpster

- Dumpsters for common use within a PUD should be located in such a manner to as to be removed from view from town or state roadway rights-of-way, such as in the interior or rear of the property.

N/A - No dumpster

- Dumpsters for common use within a PUD which are located in view from the town or state rights-of-way must be screened from that right-of-way by an opaque fence a minimum of one foot in height over the dumpster or vegetative buffer which serves the same purpose as an opaque fence.

N/A - No dumpster

- Dumpsters located so that they are abutting a property boundary of a residential district must be screened along the boundary with an opaque fence a minimum of one foot in height or vegetative buffer which serves the purpose of an opaque fence.
- Individual containers shall be uniform in appearance, provide the number of dwelling units that they serve, and have locking lids.

Any additional information as may be required for the following:

- Conservation Subdivision
- Cottage Housing Development
- Manufactured Home Park
- Planned Unit Development (PUD)
- Industrial Park Development
- Downtown Development

If applicable, results and recommendations of a traffic impact analysis need to be provided.

SPECIAL USE PERMIT 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 Zoning Board of Adjustment that it can properly grant the Special Use Permit as provided for in Chapter 7, Special Use Permits. The Zoning Board of Adjustment does not have unlimited discretion in deciding whether to grant a Special Use Permit.

If necessary, please provide the information on a separate sheet of paper. Where applicable, indicate if a requirement does not apply and why. If this is a revision to a previously approved Special Use Permit and the answers to the statements below have not changed, indicate 'no change from previous approval' in the space provided.

1. Indicate how the proposed SUP development will not be in conflict with the adopted comprehensive plan or other adopted plan of the Town of Black Mountain.

The project does not intend to conflict with the adopted comp plan or other adopted plans of TOBM.

The project is designed to deliver affordable, community-oriented housing that minimizes infrastructure within the floodplain and incorporates appropriate stormwater management practices.

2. Indicate how the establishment, maintenance or operation of the proposed SUP will not be detrimental to or endanger the public health, safety, or general welfare of persons residing or working in the neighborhood of such proposed use.

The development of the land for housing will not be detrimental to or endanger the public health, safety or general welfare of persons residing or working in proximity of the parcel as it will be in compliance and reviewed by local review authorities as well as the project will implement all necessary erosion control measures and stormwater management practices in accordance with Town of Black Mountain UDO.

3. Indicate how the proposed SUP will not be injurious to existing uses of adjacent properties or those in the immediate vicinity for the purposes already permitted, nor substantially diminish or impair property values within the neighborhood.

The proposed project consists of residential housing that aligns with the surrounding land use. By providing affordable housing that integrates aesthetically and functionally with the surrounding neighborhood, the project is not anticipated to impair the value of the adjacent properties.

4. Indicate how the proposed SUP's exterior architecture, landscaping, and the functional plan of the subdivision or development does not alter or diminish the purpose or intent of the applicable district or impede the normal and orderly development and improvement of surrounding properties.

The proposed project consists of residential housing, preserved landscaping, and replanting where necessary to ensure the design aligns with the surrounding neighborhood and will be design and constructed in accordance with applicable codes with intent to not diminish the purpose or intent of the orderly development.

5. Indicate how adequate utilities, access roads, drainage and/or other necessary facilities have been or are being provided.

The proposed project is designed with intent to connect to on-site utilities to the north such as water and sewer as well as structures being constructed to be elevated above BFE to allow for proper stormwater control measures to be implemented.

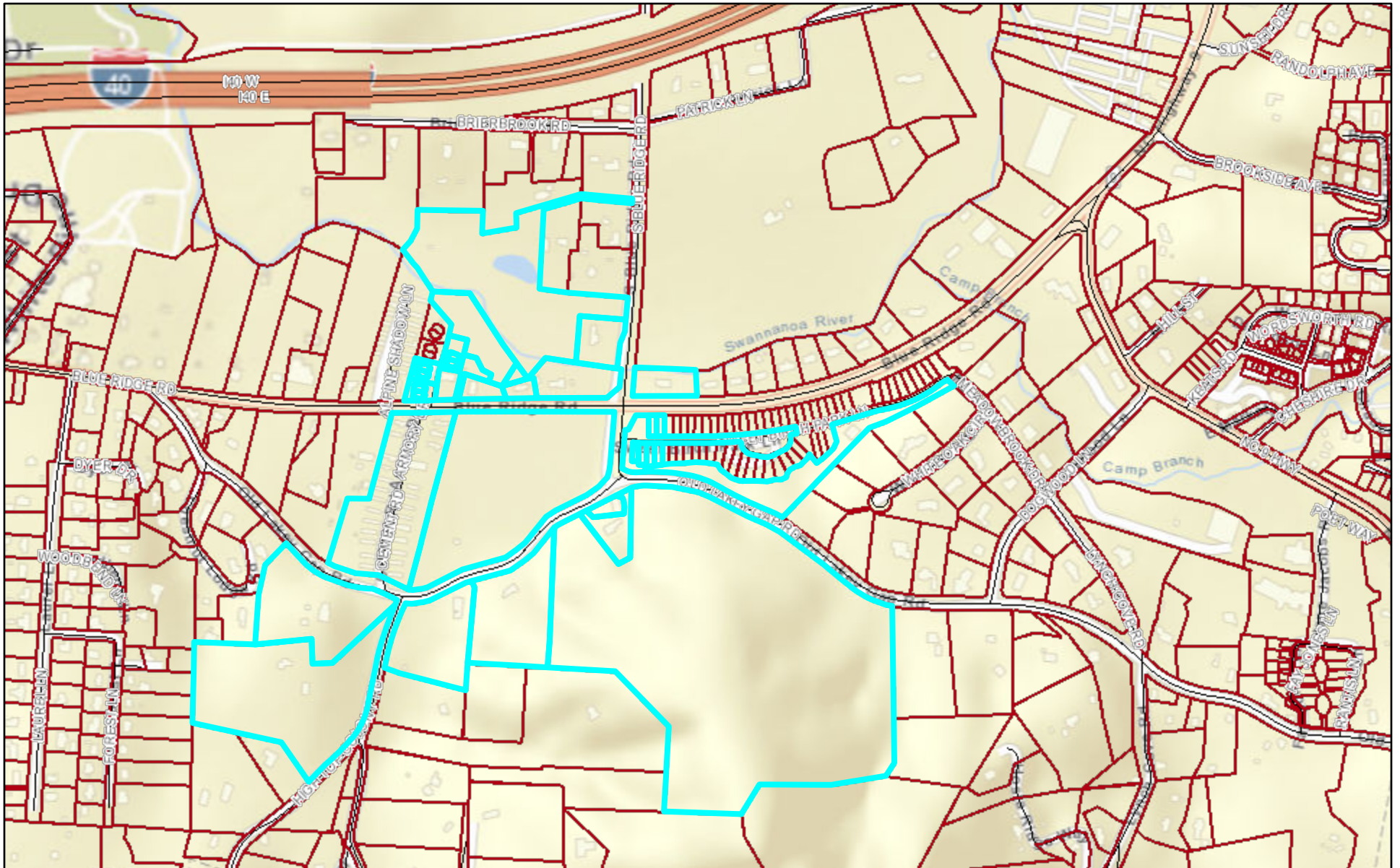
6. Indicate how adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public street and to maintain safety.

The proposed project has 2 access points both being on the less trafficked side streets for safer flow of traffic.

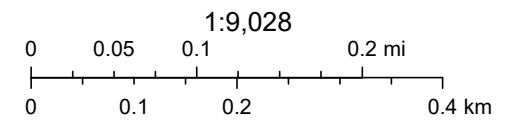
7. Indicate how the proposed SUP will, in all other respects, conform to the applicable regulations of the district in which it is located except as such regulations, may, in each instance, be modified by the zoning board of adjustment.

The proposed project will provide 2 housing types w/ dedicated open space features such as a community garden and playground to ensure it conforms with the residential nature of the surrounding and underlying district.

Buncombe County



June 30, 2025



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



Town of Black Mountain

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

NOTICE OF SPECIAL USE REQUEST (REGARDING NEIGHBORS WITHIN 200 FEET OF PROPERTY)

DATE: **July 2, 2025**
TO: **PROPERTY OWNERS**
FROM: **TOWN OF BLACK MOUNTAIN
ZONING ADMINISTRATOR**

NAME OF OWNER AND ADDRESS OF THE REAL ESTATE AFFECTED BY THE PROPOSED SPECIAL USE:
**Fuller Center Disaster Rebuilders
10 Arrowhead Road, Danvers, MA 01923**

PROPERTY DESCRIPTION/PIN#: **0619-00-4776.00000**

CURRENT ZONING CLASSIFICATION: **TR-4 (town residential)**

THIS PROPERTY IS CURRENTLY USED FOR THE PURPOSE OF: **vacant land**

THE SPECIAL USE IS REQUESTED TO ALLOW THE PROPERTY OWNER TO:
Construct 56 deeply affordable dwellings which are to be a mixture of detached single-family homes and duplexes.

An evidentiary hearing will be held on Thursday, July 17, 2025, @ 6:00 p.m. in the Council Room of Town Hall at 160 Midland Avenue.

This is your notification for this request specified under 7.2.1 of the Land Use Code for the Town of Black Mountain. Section 7.2.1.1 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.

399 Blue Ridge Rd Buffer Property Owners

<u>Name</u>	<u>Address</u>	<u>City</u>	<u>State</u>	<u>Zip</u>
High Top Colony Road LLC	11620 7th St E	Treasure Island	FL	33706
Byrneville LLC	11620 7th S11c E	Treasure Island	FL	33706
The Stepp Nicols Co Inc	PO Box 1338	Black Mountain	NC	28711
Seven Sisters Mountain Lodge LLC	15 Jane Jacobs Rd Ste 102	Black Mountain	NC	28711
Ronald & Marie Pownall	59 Old Lakey Gap Rd	Black Mountain	NC	28711
David & Virginia Barker	PO Box 1107	Black Mountain	NC	28711
Mary Ann Clevenger Rev Trs ETAL UI	18 Village Pkwy	Black Mountain	NC	28711
Virginia Graham Trust	55 Old Lakey Gap Rd	Black Mountain	NC	28711
Patsy King Hartness	73 Old Lakey Gap Rd	Black Mountain	NC	28711
Joseph & Carol Tyson	309 N Dougherty St	Black Mountain	NC	28711
Joseph & Carol Tyson	309 N Dougherty St	Black Mountain	NC	28711
Magnolia Creek Commons Homeowners Association Inc	309 N Dougherty St	Black Mountain	NC	28711
Mark & Ruth Shunick	504 Magnolia Creek Ln	Black Mountain	NC	28711
Magnolia Creek Commons Homeowners Association Inc	309 N Dougherty St	Black Mountain	NC	28711
Seth & Katherine Sullivan-Dawes	402 Blue Ridge Rd	Black Mountain	NC	28711
Joseph & Carol Tyson	309 N Dougherty St	Black Mountain	NC	28711
Magnolia Creek Commons Homeowners Association Inc	309 N Dougherty St	Black Mountain	NC	28711
Mark & Sheila Swann	400 Blue Ridge Rd #B	Black Mountain	NC	28711
Seth & Katherine Sullivan-Dawes	402 Blue Ridge Rd	Black Mountain	NC	28711
Magnolia Creek Commons Homeowners Association Inc	309 N Dougherty St	Black Mountain	NC	28711
Jack Stacey Bartlett	400A Blue Ridge Rd	Black Mountain	NC	28711
Jack Stacey Bartlett	400A Blue Ridge Rd	Black Mountain	NC	28711
L F Spaulding Jr & L G Milton	406 W State St	Black Mountain	NC	28711
Ronald & Beth Collins	400 Blue Ridge Rd	Black Mountain	NC	28711
Russell & Deborah Wanser	102 S Blue Ridge Rd	Black Mountain	NC	28711
Alan & Margaret Sharpe	501 Sweet Birch Park Ln	Black Mountain	NC	28711
Robert & Rhonda Dehoff II	503 Sweet Birch Park Ln	Black Mountain	NC	28711
Bobby & Cynthia McDaniel	505 Sweet Birch Park Ln	Black Mountain	NC	28711
Benedict & Linda Baglio	507 Sweet Birch Park Ln	Black Mountain	NC	28711
Michael & Geraldine Nelson	504 Sweet Birch Park Ln	Black Mountain	NC	28711

Ronald King; Marilyn King; Frank Blankenship; Kelli Blan	506 Sweet Birch Park Ln	Black Mountain	NC	28711
Sweet Birch Commons Property Owners Association Inc	145 Charlotte Hwy	Asheville	NC	28803
Sweet Birch Commons Property Owners Association Inc	145 Charlotte Hwy	Asheville	NC	28803
Joseph & Carol Tyson	309 N Dougherty St	Black Mountain	NC	28711

<u>PIN #</u>
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**Town of Black Mountain Staff Report
Board of Adjustment**

Case No: S-25-01

Hearing Date: July 17, 2025

Case Name: 399 Blue Ridge Rd

Procedure: Special Use Permit Evidentiary Hearing

Address of Variance Request:

399 Blue Ridge Rd.

Black Mountain, NC 28711

Property ID Number (PIN): 061900477600000

Applicant:

Fuller Center Disaster Rebuilders

10 Arrowhead Rd.

Danvers, MA 01923

Request:

The applicant is seeking a Special Use Permit to develop the parcel as a Planned Unit Development consisting of what the applicant describes on their application as “56 deeply affordable dwellings.” The development is to be a mixture of single-family homes and duplexes.

Town Staff:

Jennifer Tipton, Clerk to Board of Adjustment

Russell Cate, Planner 1/Zoning Administrator

I. SUMMARY OF REQUEST

The applicant is seeking a Special Use Permit to develop the parcel as a Planned Unit Development consisting of 56 homes – a mix of single-family homes and duplexes. The density calculation is 6.2 units per acre, meeting the Planned Unit Development density requirement of no less than four units per acre and no more than eight units per acre. The project includes an open space area of 1.50 acres, complying with the PUD requirement that at least 15 percent of the parcel be dedicated to open, permeable space in addition to the perimeter yard setbacks.

The plans depict the following major elements: open space, with a playground, a dog park, and a community garden located in the open space area; a mail kiosk; and, the required off-street parking (room for at least two vehicles to park off-street per dwelling unit) as well as two on-street parking spaces. A small retaining wall is depicted along a portion of the west side of the parcel.

Access is accommodated via a “street-type driveway connection” with South Blue Ridge Road and with Old Lakey Gap Road. The roads in the PUD are private roads that are asphalt.

The plans depict a 10-foot landscape barrier along the periphery of the parcel.

The disturbed area is 5.5 acres, triggering the requirement for a stormwater permit and stormwater control measure or measures. The plans depict a stormwater control measure.

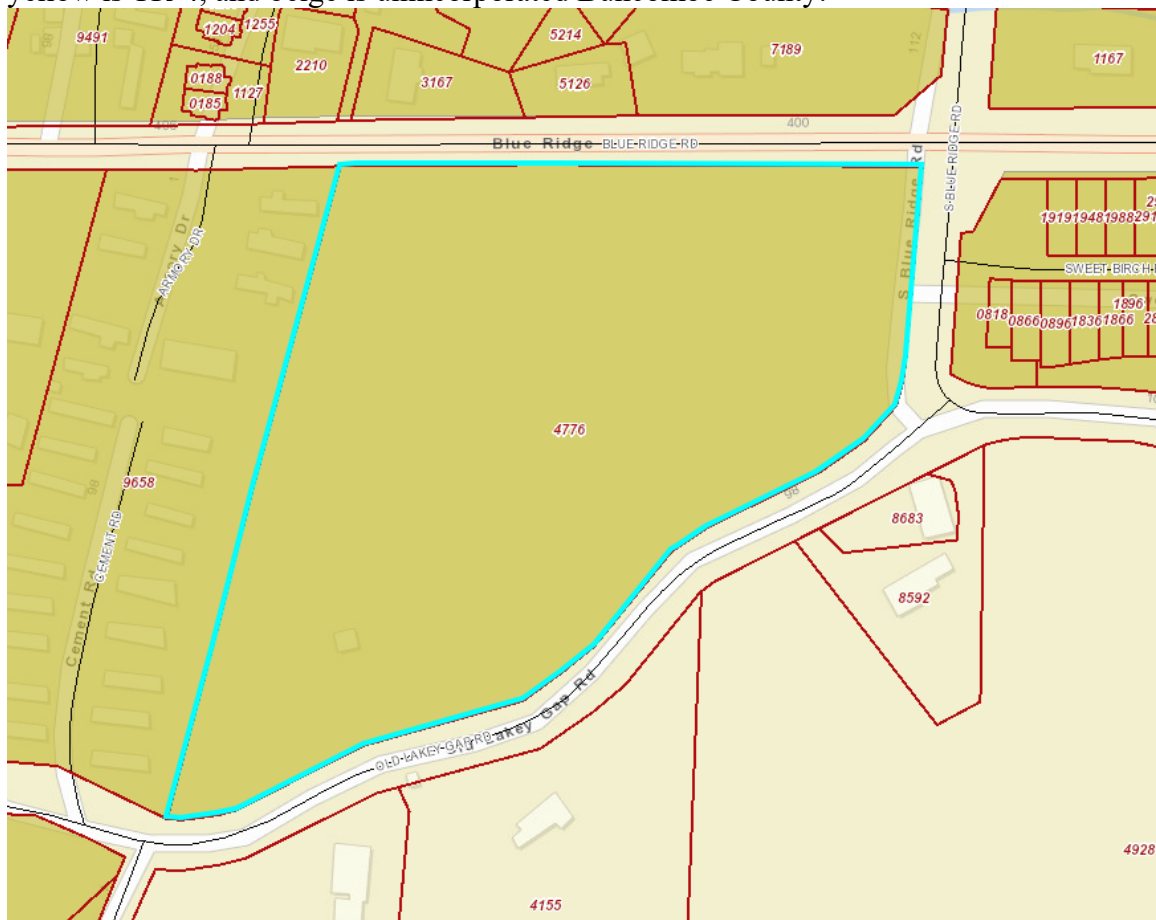
The utility plan for the project depicts an existing 6-inch Metropolitan Sewerage District (MSD) line serving the parcel, as well as an existing water line on northern edge of the parcel. In addition, the plan shows a proposed sewer line with 20-foot MSD easement. Also, a proposed water line is shown. A “proposed fire hydrant assembly” is the southwest corner of the parcel.

II. PROCESS – REQUIRED CITY APPROVALS

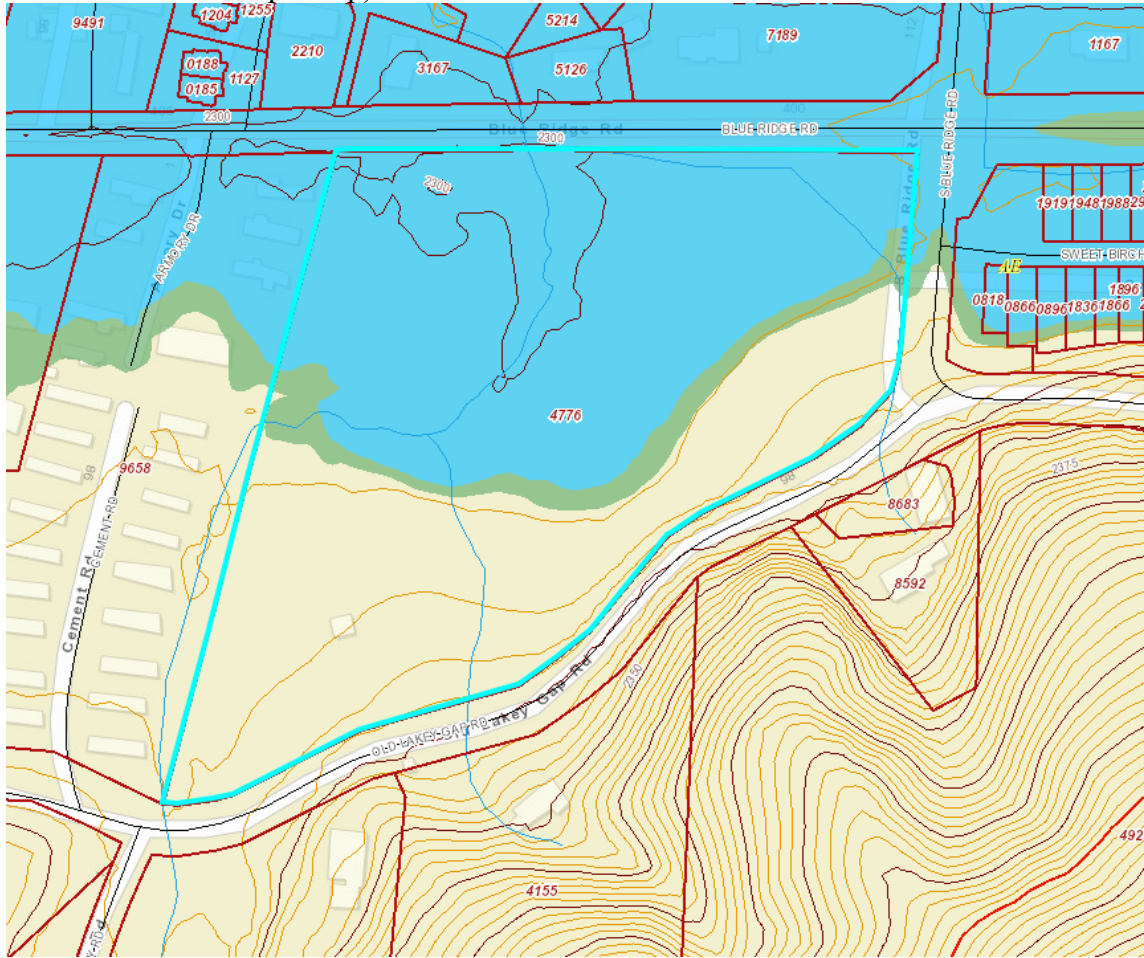
In addition to this Special Use Permit, the applicant will need to obtain zoning compliance approval and a building permit that demonstrates compliance with all applicable standards of the Zoning Ordinance and the North Carolina Building and Fire Codes.

III. ZONING AND LAND USE

The parcel is in the Town Residential (TR-4) zoning district. This clip is from Buncombe GIS – yellow is TR-4, and beige is unincorporated Buncombe County:



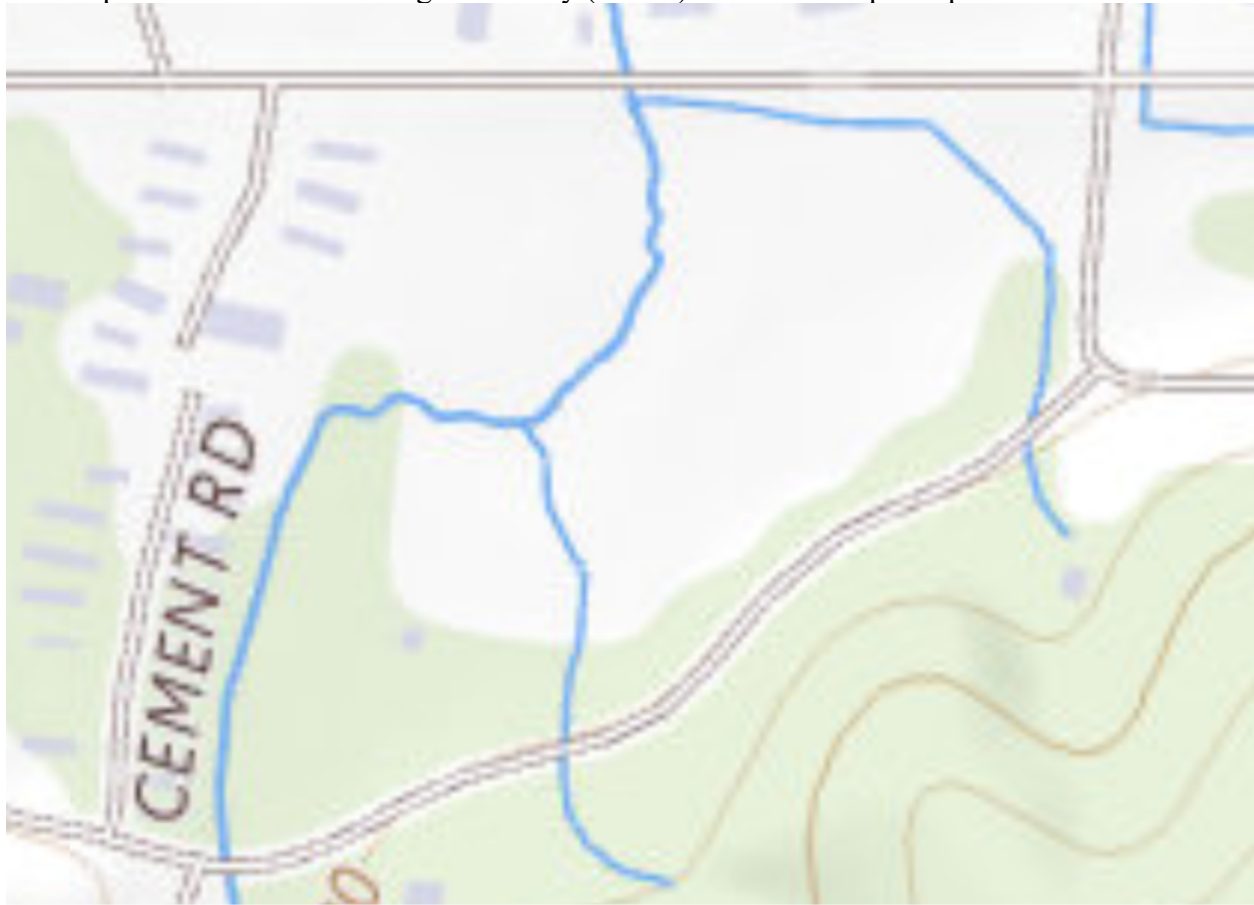
This clip is from Buncombe GIS with the *Stream & River, 2020 – DFIRM Flood Data*, and *5 Foot Contours* layers on (the *Stream & River* layer corresponds to watercourses shown on the USGS 7.5-minute topo map):



This clip is from Buncombe GIS showing *Post Helene 2024 Imagery*:



This clip is from the U.S. Geological Survey (USGS) 7.5-minute topo map:



Source: USGS *topoBuilder* [<https://topobuilder.nationalmap.gov/>]

Minimum Yard Requirements (setbacks) apply only on the perimeter of the Planned Unit Development project. For TR-4, those requirements are:

- Front: 20 feet
- Side: 10 feet
- Rear: 15 feet

The maximum building height of any structure in a PUD cannot exceed the building height requirement of the district in which it's located. The TR-4 height limit is 35 feet. Chimneys and roof-mounted mechanical equipment are not included in height measurement, and there's the following allowance for parapets: in zoning districts with a 35-foot height limit, a parapet may extend as much as 3.5 feet above the 35-foot point of the structure.

Reference: Sections 4.5.2, and 4.7.15, and 7.8.4 of the Land Use Code.

Surrounding parcels:

	North	South	East	West
Adjacent Zoning Designation	TR-4	The two parcels to the southwest are in Buncombe County's Residential District (R-1) The three parcels to the southeast are in Buncombe County's Low-Density Residential District (R-LD)	TR-4	TR-4
Adjacent Land Uses (according to Buncombe County Property Record Cards)	single-family home	The two R-1 parcels: single-family home The three R-LD parcels: vacant land (one parcel); single-family home (the other two parcels)	Planned Unit Development (Sweet Birch Commons)	Manufactured Home Park

The *Purpose and Intent* of the Town Residential (TR-4) zoning district is:

The town residential district is established to allow for a variety of housing types while maintaining an overall residential character with medium density. Any use which, because of its characteristics would interfere with the residential nature of the area is excluded.

Reference: Section 4.7.3 of the Land Use Code.

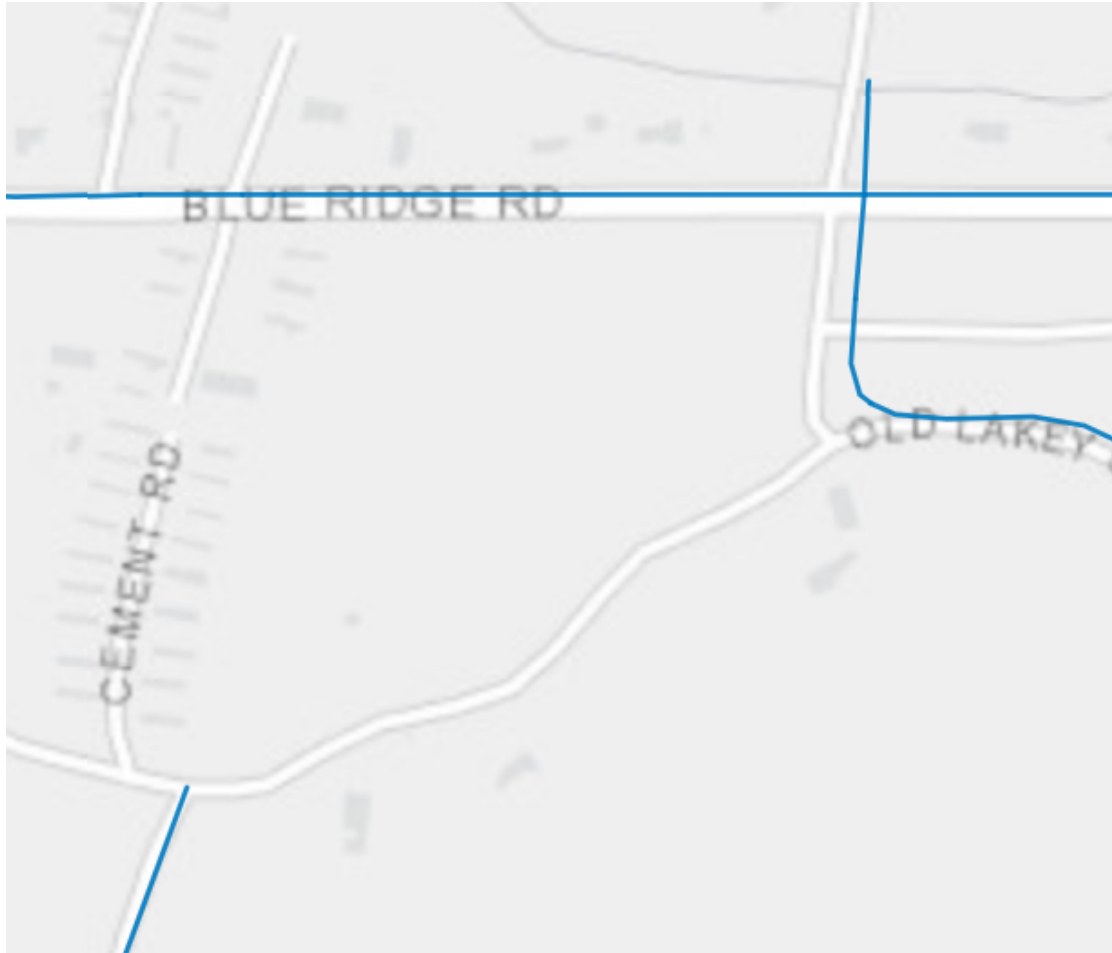
Existing Conditions

According to the Buncombe County Property Record Card, the parcel has no buildings. The county lists the lot size as 9.98 acres. The overall slope of the lot is 5.02 percent (according to <https://www.mapwnc.org/find-slope-for-parcel>).

Below is a street view of the lot (photo taken on 7/9/2025):



Below is a clip from N.C. Department of Transportation’s *NC OneMap*, which depicts NCDOT State Maintained Roads with blue lines:



Source: *NC OneMap: NCDOT State Maintained Roads*

IV. NOTIFICATION

Notice of the special use permit 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 July 2, 2025. Legal notice appeared in *Black Mountain News* the weeks of July 10, 2025, and July 17, 2025. The property was posted with a notice listing the time and date of the hearing.

V. ANALYSIS

The context of the special use permit application is a Planned Unit Development. On their application, the applicant states: “The project consists of 56 deeply affordable dwellings, the dwellings are to be a mixture of detached single-family homes and duplexes.” On the site plan, the single-family homes are labeled *Type A 20’ x 40’ Single-Family Home*, and the duplexes are labeled *Type B 42’ x 40’ Duplex*.

The plans depict **open space** with a playground, a dog park, and a community garden located in the open space area. The complies with the following requirement for residential PUDs:

For PUDS containing residential units, the open space designation shall be established for the purpose of passive or active recreational purposes.

The depicted **access** (a “street-type driveway connection” with South Blue Ridge Road and with Old Lakey Gap Road, both of which are public roads) appears to comply with the requirement for a PUD to demonstrate the following:

Traffic and truck egress/ingress must be designed so as to minimize traffic hazards on public streets.

The plans depict a 10-foot **landscape barrier** along the periphery of the parcel, complying with the following requirement:

If the property adjoins a residential district, then a fence, hedge or other natural planting of comparable opacity shall be provided along the side or rear lines where the property adjoins said residential district.

As shown in the USGS and Buncombe GIS clips above, the parcel has **watercourses** that are shown on the USGS 7.5-minute topo map. This triggers the requirements of the *Stream Buffer Protection Standards*, which – stated in summary form – are:

- Stream Buffer: 30 feet on both sides of watercourse: only features like natural-surface trails and stormwater control structures (when alternate methods of stormwater control aren’t feasible).
- Transitional Area: additional 20 feet on both sides of watercourse: only pervious materials.

The standards state that:

Stream buffers shall be clearly indicated on all development plans, including concept plans, preliminary plans and final plans, and on all preliminary and final plats.

The applicant submitted a site plan, landscape plan, storm and grading plan, and utility plan that depict one of the three watercourses, including showing the 30-foot Stream Buffer as required. The label for this feature on the plans is “Existing Stream and 30’ Buffer.”

For the watercourse that USGS shows in the northeast of the parcel, the watercourse and the Stream Buffer need to be depicted on the site plan, landscape and compliance plan, storm and rough grading plan, and utility plan. The depiction likely won’t trigger the need for a change in the proposed development, because in this portion of the parcel the plans depict only one development feature: crossing by the “proposed private asphalt road.” This is permitted, as stated in exception **I** in the standards:

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.

In the immediate area of the watercourse that USGS shows running north-south on the southern portion of the parcel, the plans depict single-family homes and duplexes. In the area of the watercourse, the storm and rough grading plan depicts a segment of “proposed storm system,” as well as the following features/structures: an “existing storm pipe,” a “proposed connection into existing storm structure,” and a “proposed open throat.” These four features/structures appear to conform to exception **6** in the standards:

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.

Reference: Article IX (Stream Buffer Protection Standards) in Chapter 20 of the Code of Ordinances; USGS topoBuilder [<https://topobuilder.nationalmap.gov/>].

The applicant submitted a site plan that depicts the 100-year **flood zone** (sometimes referred to as the federal blue *AE* zone). Six duplex structures, one single-family structure, a portion of the proposed private asphalt road, a community garden, a dog park, a playground, and open space, are in the flood zone. For these reasons – and possibly additional – the requirements of the *Flood Damage Prevention Ordinance* take effect. Any development in the *AE* zone requires a Floodplain Development Permit. “Development” means any human-made change including building of structures, addition of gravel, etc.

Reference: Section 2.3 (Flood Damage Prevention Ordinance) of the Land Use Code.

The disturbed area is 5.5 acres, triggering the requirement for a stormwater permit and **stormwater control measure or measures**. The plans depict a stormwater control measure.

On the *Special Use Application Checklist* is the following:

Sidewalks or greenway easements shall be provided in locations shown on the adopted comprehensive pedestrian master plan. A fee-in-lieu of construction or dedication of easement may be provided to the town at an equivalent cost to construction upon approval of the town planning board.

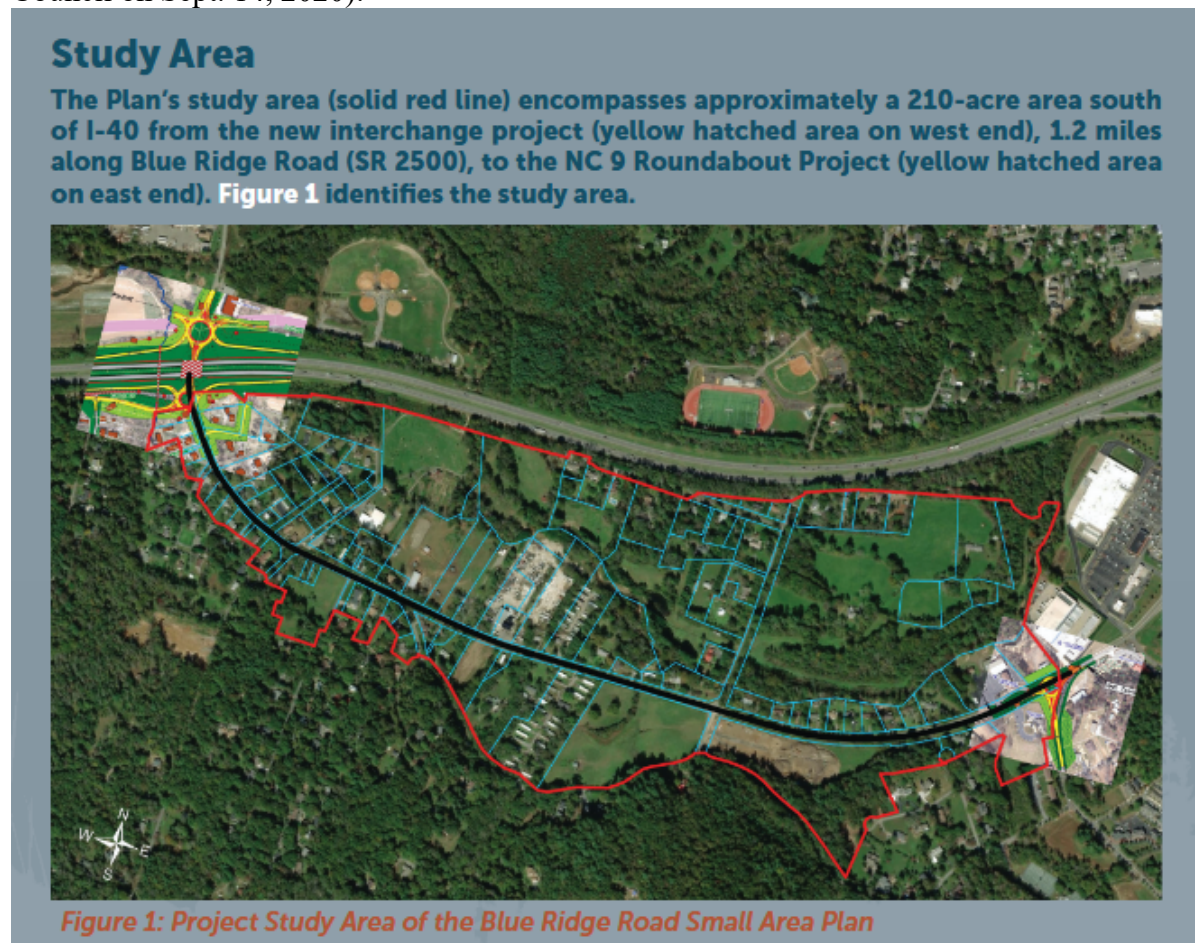
For this checklist item, the applicant wrote: “N/A – Proposed internal greenway connections are shown in place of sidewalks.” The site plan does depict – in green – **internal path connections**.

In the *Access and Streets* subsection of the *PUD Design* section of Chapter 7 are two items related to sidewalks and greenways:

The plan shall provide for internal pedestrian circulation with sidewalks or greenway trails. Sidewalks shall form a logical, safe and convenient system for pedestrian access to all dwelling units, appropriate project facilities and connections to off-site pedestrian destinations such as sidewalks, greenways, or bus-stops external to the development. PUDs adjacent to transit routes must provide a pedestrian connection to, and a provision for, a public bus stop.

In addition to internal pedestrian consideration, the plan shall allow for the provision that the developer will provide the town with a minimum eight-foot sidewalk right-of-way along any adjoining or abutting town dedicated street.

The parcel is in the study area of the *Blue Ridge Road Small Area Plan* (adopted by Town Council on Sept. 14, 2020):



The small area plan concludes with a recommendation that the following alternatives be advanced for Blue Ridge Road in the medium and low density residential areas (including the area of 399 Blue Ridge Rd.) in coordination with the MPO and NC DOT:

- Alternative 1: two-lane roadway, curb and gutter, sidewalk and multiuse path
 - *Turn lane intersection alternatives*
- Alternative 2: two-lane roadway, curb and gutter, sidewalk and multiuse path
 - *Roundabout intersection alternatives*
- Alternative 3: two-lane roadway, combination of Alternative 1 and Alternative 2 (roundabout and turn lane intersection alternatives, sidewalk and multiuse path)

Given that the Blue Ridge Road Small Area Plan calls for a sidewalk and multiuse path along Blue Ridge Road, the Board of Adjustment should seek a “**sidewalk or greenway easement**” along the portion of the parcel that abuts Blue Ridge Road.

The site plan and landscape compliance plan do depict the required “internal pedestrian consideration” (*Pedestrian Trail* lines that are colored green are shown on the project plans). But in addition, the Board should seek the provision to the Town of “**a minimum eight-foot sidewalk right-of-way**” along the “abutting town dedicated street” of Old Lakey Gap Road.

Note: Most of Old Lakey Gap Road is a State roadway. But according to the *Powell Bill Street Map for the Town of Black Mountain*, .50-mile of the road is a Town roadway. Mirroring this, *OneMap: NCDOT State Maintained Roads* depicts the portion of Old Lakey Gap Road that abuts the parcel as not being a State maintained road.

Reference: Section 7.8.5.2 of the *Land Use Code*; *Blue Ridge Road Small Area Plan*; *Powell Bill Street Map*; *OneMap: NCDOT State Maintained Roads*.

There are eight overall **goals** for Planned Unit Development:

1. Facilitate more affordable housing by providing possibilities for savings in infrastructure, installation costs, and energy costs through clustering of dwellings;
2. Retain natural features and encourage developments that will be compatible with environmentally sensitive areas;
3. Encourage pedestrian circulation within and adjacent to the PUD;
4. Encourage mixed-use development;
5. Encourage quality design and management of open space.
6. Establish criteria and guidelines for housing developments consisting of one or more principal structures or buildings and accessory structures or buildings to be constructed on a lot or plot not subdivided into the customary streets and lots, but in which dwelling units, are owned individually, and the structure, common areas and facilities are owned by all the owners on a proportional, undivided basis or by an established homeowners' association;
7. Establish additional criteria for developments consisting of one or more principal structures or buildings and accessory structures or buildings to be constructed on a lot or plot to be subdivided at the same time or in phases for the purpose of commercial or industrial uses and which may not meet the customary street and lot layouts;

8. Provide for a cohesive approach to multi-family development that is sensitive to the surrounding properties and which protects the health, safety and welfare of its residents and neighbors.

The submitted plans indicate clustering (goal 1); overall compatibility with the flood zone, stream, and two small wetland areas (goal 2); provision of internal pedestrian paths (goal 3); creation of a community with individually-owned units and common areas and facilities owned by all the owners (goal 6); and, sensitivity to the surrounding properties (goal 8).

“Mixed use” is defined as a building or cluster of buildings that contain both residential and non-residential spaces; this PUD is entirely residential, so it is not “mixed-use development” (goal 4).

Goal 7 is not applicable, and staff cannot comment on the Goal 5 because “quality” in the phrase “quality design” is subjective.

Reference: Section 7.8.1 of the Land Use Code.

Section 7.2.7 of the Land Use Code lists the **standards** that the Board of Adjustment must apply in deciding whether to issue (or amend) a special use permit:

No special use permit shall be issued or amended unless the board of adjustment shall find that:

1. The special use will not be detrimental to or endanger the public health, safety, or general welfare.
2. The special use will not be injurious to the use and enjoyment of other property in the immediate vicinity.
3. The special use will not substantially diminish or impair property values within the immediate vicinity.
4. The special use will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district.
5. The exterior architectural appeal and functional plan of any proposed structure will not be so at variance with the exterior architectural appeal and character of the neighborhood or district in which the use will be located.
6. Adequate utilities, access roads, drainage and/or other necessary facilities have been, are being, or will be provided.
7. Adequate measures have been or will be taken to provide ingress and egress designed to minimize traffic congestion in the public streets.
8. If the special use involves the subdivision of land, it conforms to all applicable regulations of Chapter 3 of this Land Use Code.
9. The special use, in all other respects, conforms to the applicable regulations of the district in which it is located, except as such regulations have, in each instance been modified by the board of adjustment in approving the issuance of the special use permit.

And Section 7.2.8 details the “effect of approval:”

A special use permit, once approved, attaches to and runs with the land and no subsequent development or use of the property may be undertaken except in conformity with the permit and all plans, specifications, and conditions.

Per Section 2.1.4 of the 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.

ATTACHED FOR REFERENCE

Sections 7.1, 7.2, and 7.8 of the Land Use Code