



TOWN OF BLACK MOUNTAIN BOARD OF ADJUSTMENT

April 17, 2025

REGULAR MEETING AGENDA

Time: 6:00 PM

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

Agendas and agenda packets may be accessed electronically from your laptop or smartphone. Visit the Town's website at www.townofblackmountain.org. Click on **Government** and select **Town Council** to access agenda materials for Town Council meetings. You can also scan this QR code with your smartphone to access agenda materials.



 Conserve Resources; print only when necessary.

The Town of Black Mountain is committed to providing accessible facilities, programs, and services for all people in compliance with the American with Disabilities Act (ADA). Hearing assistive devices are available at the door. Should you need other assistance or accommodation for this meeting, please contact Town Clerk Wesley Barker at: town.clerk@tobm.org, or (828) 419-9300 / TDD (800) 735-2962

-
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 March 20, 2025, as written [or as amended]**
 4. **OLD BUSINESS**
 5. **NEW BUSINESS**
 - 5.A. **Approval of Order for 501 Montreat Road Variance**

5.B. Training on May 7 – UNC School of Government (online)

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
Nicole Stallings
Chloe Brown
Linda Brinson

Absent:

John Hines
David Barley

Staff:

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

The meeting was called to order at 6:08 p.m. and duly constituted and opened for business with a quorum of four (4) regular members.

II. ADOPTION OF AGENDA

Chair Lauren Dodgin made a motion to adopt the agenda as presented. The motion was approved by consensus by a vote of 4-0.

III. ADOPTION OF MINUTES

Chair Lauren Dodgin made a motion to adopt the minutes of February 20, 2025, as written. The motion was approved by consensus by a vote of 4-0.

IV. OLD BUSINESS

None.

V. NEW BUSINESS

1. Variance Request – 501 Montreat Road

Chair Lauren Dodgin read the opening statement. Jennifer Tipton swore in all parties wishing to participate in the hearing. There was no ex parte communication or conflicts with any of the board members.

Russell Cate provided the board with the staff report of the variance request. The applicant is seeking a variance to remove the stream buffer from the blue line stream as depicted on GIS data. The variance request is for both watercourse standards which include a thirty-foot buffer on each side of the watercourse and then a twenty-foot transitional area on top of the thirty-foot buffer. The applicants did request an administrative relief for a reduction in the stream buffer from thirty feet to fifteen feet and a reduction in the transitional area from twenty feet to fifteen feet. This request was granted. Mr. Cate noted that the property is zoned UR-8, has a single-family residence and a small carport.

Board of Adjustment Regular Meeting
March 20, 2025

Brian Daniel of Scroggs Construction is the representative of the owners. Mr. Daniel acknowledged the purpose of the stream buffer is to protect the streams, however, they have not been able to find an active stream on the property and it is instead an active drainage area. It appears that the area is shown on the USGS map because it meets the threshold of statistical data. The applicants are wishing to construct a three hundred and eight square-foot addition that will meet all setbacks, but would not meet the buffer requirements.

Chloe Brown made a motion to go into recess for deliberations. The board discussed that the applicants would benefit relief of the buffer. There was a question of if the drainage area is ever an actual waterway. If the stream is an ephemeral stream, there could potentially be unintended consequences for the owner and other property owners. In looking at photos and historical knowledge, it does appear that the drainage area did not take on water or hold water during the hurricane. The addition would not encroach into the setbacks and it was noted that no other property owners came to the meeting to express concerns. The board came out of recess.

Mr. Daniel noted that the stream/drainage area begins in lot 13/14 on the plat and then goes into the applicant's lot. Mr. Daniel noted that the drainage area does appear to be naturally made.

Chloe Brown made a motion to close the evidentiary hearing. The motion was approved by consensus by a vote of 4-0.

The board found the following:

1. There are unnecessary hardships that would result from the strict application of the ordinance because the area in question appears to be a drainage area and not an actual blue line stream and would not allow the Applicants to use the property as intended.
2. The hardship does result from conditions that are peculiar to the property because of the placement of the home in conjunction with the location of the stream/drainage area and buffer area.
3. The hardship did not result from actions taken by the applicant as the house and stream/drainage area were already in existence.
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 as it allows the applicants to use their property as other property owners and does not interfere with the stream or water quality.

Chair Dodgin made a motion to grant the variance request to remove the stream buffer requirements. The motion was seconded by Nicole Stallings and approved by a vote of 4-0.

VI. COMMUNICATION FROM BOARD OF ADJUSTMENT

None.

VII. COMMUNICATION FROM STAFF

None.

Board of Adjustment Regular Meeting
March 20, 2025

VIII. ADJOURNMENT

With no further business, the meeting was adjourned at 6:46 p.m.

Prepared by:

Lauren Dodgin, Chair

Jennifer Tipton, Senior Admin

In the Matter of the Application of)
Taylor and Sarah Hada for a)
Variance for Property at 501 Montreat Rd)
PIN No. 0619-38-2414.00000)
_____)

ORDER

THIS CAUSE, coming on before the Board of Adjustment for the Town of Black Mountain on March 20, 2025, upon the application of Taylor and Sarah Hada to remove the stream buffer and transitional area requirements for property at 501 Montreat Road in Black Mountain, PIN #0619-38-2414.00000, which is Plat Book 0154 at Page 0106, Buncombe County Registry.

Brian Daniel of Scroggs Construction 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 four 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 Taylor and Sarah Hada, owners of the property located at 501 Montreat Road, Black Mountain, North Carolina, which has the current PIN number of 0619-38-2414.00000 as shown on the Buncombe County tax maps, also being Plat Book 0154 at Page 0106, Buncombe County Registry.
4. The property is zoned HB-8.
5. The property is .25 acres.
6. The property has a 1,230 square foot single-family residence that was constructed in 1924.

7. The Applicants propose to add a 308 square foot addition to the existing structure.
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 representative for the Applicants noted that there is not an active stream on the property, but rather it is an active drainage area.
12. The representative for the Applicants noted that the active drainage area meets the statistical data threshold to be listed on the USGS maps, but it is only from a topographical point.
13. The addition would meet all setback requirements.
14. 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).
15. There are unnecessary hardships because the area in question appears to be a drainage area and not an actual blue line stream and would not allow the Applicants to use the property as intended.
16. The hardship results from conditions that are peculiar to the property due to the

placement of the house and in conjunction with the active drainage area, and being shown as a blue line stream.

17. The hardship did not result from actions taken by the Applicants or the property owner in that the property is already existing and developed.
18. 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 Applicants to use the property as others in the neighborhood and does not interfere with the stream and water quality.

BASED UPON THE FOREGOING FINDINGS OF FACT, THIS BOARD by a vote of 4 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 501 Montreat 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.