



TOWN OF BLACK MOUNTAIN BOARD OF ADJUSTMENT

September 17, 2026

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 August 20, 2026, as written [or as amended]**
 4. **OLD BUSINESS**
 5. **NEW BUSINESS**
 - 5.A. **Approval of Order for Variance - 504 Pearl View Drive**

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, August 20, 2026, 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:

Nicole Stallings, Chair
David Barley
Mary Hall
Ted Rausch, Alternate
Alan Simmons, Alternate

Absent:

John Hines, Vice Chair
Linda Brinson
Mary Kyrke, Alternate

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 two (2) regular members.

II. ADOPTION OF AGENDA

Ted Rausch made a motion to adopt the agenda as presented. The motion was seconded by Mary Hall and approved by a vote of 5-0.

III. ADOPTION OF MINUTES

David Barley made a motion to adopt the minutes of June 18, 2026, as written. The motion was seconded by Mary Hall and approved by a vote of 5-0.

IV. OLD BUSINESS

None.

V. NEW BUSINESS

1. Variance Request – 504 Pearl View Avenue

Chair Nicole Stallings opened the evidentiary hearing for Case #VAR-26-0003.

No public was in attendance to be deemed parties with standing.

No board member reported any ethical issues and there were no objections to the panel.

Jennifer Tipton swore in Russell Cate for staff and Darah and Emily Bazargan for the applicants.

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Russell Cate gave a summary of the staff report. The property at 504 Pearl View Drive is seeking a variance from Section 4.7.15, Dimensional Requirements by Zoning District. Section 4.7.15 requires a rear setback of fifteen feet in the UR-8 zoning district. The applicant is seeking a variance to allow a pergola structure to be four feet and five inches from the property line for a total variance request of ten feet and nine inches from the required fifteen-foot rear setback.

Darah Bazargan, 504 Pearl View Drive, explained that the rear deck is the only level area in the back yard. The posts of the pergola were placed in existing holes that were there for a fence that was removed and they are just trying to reuse the established location. The pergola will remain open and unenclosed. The pergola does not interfere with the neighboring driveway. They limited their request to the necessary amount needed. The neighbor did write a letter, and the board accepted the letter into evidence but were advised that they could not base their decision on the letter since the author of the letter was not present to testify. The deck was already existing, and they wanted to extend the deck and add the pergola. Their contractor did not make them aware that a permit was needed and based on their research they did not think one was required for the small deck extension. The fence will also be rebuilt, and Russell Cate did note that fences can go to the property line. The pergola cannot extend any further because there is a retaining wall where the deck stops and is not cosmetic but necessary. Based on the measurement from the house to the rear setback, only about eight feet is usable. The deck is approximately twenty inches off the ground.

Chair Stallings made a motion to close the public hearing. The motion was seconded by Ted Rausch and approved by a vote of 5-0.

The board discussed the request and noted the shape of the lot, the driveway encroachment, and the space of the back yard.

With regard to variance request VAR-26-0003, the request of Darah and Emily Bazargan, the board found the following findings of fact:

1. That unnecessary hardship does result from the strict application of the regulations because the back of the house is 15' and 11" to the property line leaving only 11" to use before having to encroach into the rear setback of 15'.
2. The hardship does result from conditions that are peculiar to the property because the lot is atypical in shape and the neighboring driveway encroaches into the property as well as the existing retaining wall limiting space.
3. The hardship does not result from actions taken by the applicant or the property owner because the lot, driveway, and retaining wall were existing before the applicants purchased the property. (Note: The vote for this one was 4-1, with David Barley voting against.)
4. The requested variance is consistent with the spirit, purpose, and intent of the regulations such that public safety is secured and substantial justice is achieved because the neighbor can safely access the driveway and the applicants are able to extend their rear deck to make their back yard more accessible and safe.

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Nicole Stallings made the following motion:

I move the board to grant the requested variance for 504 Pearl View Drive to decrease the rear setback from fifteen feet to four feet and five inches for the pergola as it currently exists and remains as intended.

The motion was seconded by Ted Rausch and 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 6:57 p.m.

Prepared by:

Nicole Stallings, Chair

Jennifer Tipton, Senior Admin

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TOWN OF BLACK MOUNTAIN
COUNTY OF BUNCOMBE

BEFORE THE BLACK MOUNTAIN
BOARD OF ADJUSTMENT

In the Matter of the Application of)
Darah and Emily Bazargan)
Variance for Property at)
504 Pearl View Drive)
PIN #0619-78-0053.00000)

ORDER

THIS CAUSE, coming on before the Board of Adjustment for the Town of Black Mountain on August 20, 2026, upon the application of Darah and Emily Bazargan, to decrease the rear setback at 504 Pearl View Drive in Black Mountain, PIN #0619-78-0053.00000, which is Plat Book 5843 at Page 1811, Buncombe County Registry.

Darah and Emily Bazargan, Applicants, appeared to present their case.

Jennifer Tipton, Senior Admin. and Russell Cate, Planner I/Zoning Administrator appeared for 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 Applicants, and having considered all the evidence presented by Town Staff and the Applicants and the statements and arguments of the Applicants, 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 Darah and Emily Bazargan are the owners of property located at 504 Pearl View Drive, Black Mountain, North Carolina, which has the current PIN number of 0619-78-0053.00000 as shown on the Buncombe County Tax Maps, also being Plat Book 5843 at Page 1811, Buncombe County Registry.
4. The property is zoned UR-8.
5. The property is .17 acres.
6. The property is a single-family residence.
7. The property has an average slope of 10.26%.

8. Chapter 4, Section 4.7.15, Dimensional Requirements, requires a rear setback of fifteen feet in the UR-8 zoning district.
9. The Applicants are requesting a variance from the rear setback of ten feet and nine inches.
10. There is an existing retaining wall that restricts the deck encroaching any further than the requested variance.
11. The deck existed when the residence was purchased by the Applicants.
12. The Applicants have extended the deck and have added an open-air pergola.
13. To be granted a variance, the Applicant is required to prove all of 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 the 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 1.7.3E. of the LUC.)
14. There are unnecessary hardships that would result from the strict application of the ordinance because the back of the house is fifteen feet and eleven inches to the property line leaving only eleven inches of usable space before having to encroach into the required fifteen-foot setback.
15. The hardship results from conditions that are peculiar to the property such as location, size or topography because the lot is atypical in shape and the neighboring driveway encroaches into the property as well as the existing retaining wall limiting space.
16. The hardship does not result from actions taken by the property owner because the lot, driveway, and retaining wall existed before the applicants purchased the property.
17. The requested variance is consistent with the spirit, purpose, and intent of the regulations such that public safety is secured, and substantial justice is achieved because the

neighbor can safely access the driveway and the Applicants are able to extend their rear deck to make their back yard more accessible and safe.

BASED UPON THE FOREGOING FINDINGS OF FACT, THIS BOARD, by a vote of 5-0, concludes that the Applicants should be granted a variance to decrease the required rear setback of fifteen feet to four feet and five inches for the pergola as it currently exists and remains as intended.

IT IS NOW THEREFORE, ORDERED, that the Applicants are granted a variance to decrease the required rear setback of fifteen feet to four feet and five inches for the pergola as it currently exists and remains as intended.

This the ____ day of _____, 2026.

Nicole Stallings, Chair

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 of this order is served on you. See Section 1.7.2 of the Land Use Code, Appeals from Decisions of the Board of Adjustment, in the Town of Black Mountain Code of Ordinances.