



TOWN OF BLACK MOUNTAIN

160 Midland Avenue ♦ Black Mountain ♦ N.C. ♦ 28711

Phone: (828) 419-9300 ♦ Fax: (828) 669-2030

MEMORANDUM

To: Town of Black Mountain Zoning Board of Adjustment
From: Jennifer Tipton, Zoning Administrator
Re: Agenda Packet for December 19, 2019
Date: December 13, 2019

The **Town of Black Mountain Zoning Board of Adjustment** will meet on **Thursday, December 19, 2019 at 6:00 p.m.** in Town Hall at 160 Midland Avenue.

Please find the following items for your information and use at the meeting:

1. The proposed agenda;
2. Draft minutes from September 19, 2019;
3. Variance Request for 48 Sisters View Drive; and
4. Review new Boards and Commissions Handbook.

Please let Jennifer Tipton know if you are **unable** to attend this meeting.
jennifer.tipton@townofblackmountain.org or (828) 419-9373.

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. Should you need assistance or a particular accommodation for this meeting, please inform Jennifer Tipton at (828) 419-9373 or by email at jennifer.tipton@townofblackmountain.org.

CC: Jessica Trotman, Planning Director
Ron Sneed, Town Attorney



PUBLIC NOTICE

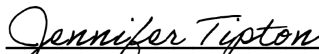
BLACK MOUNTAIN ZONING BOARD OF ADJUSTMENT

REGULAR MEETING

Thursday, December 19, 2019 at 6:00 p.m.

The Black Mountain Zoning Board of Adjustment will meet for their monthly meeting on **Thursday, December 19, 2019, at 6:00 p.m.** at Town Hall, 160 Midland Avenue, Black Mountain, N.C. The purpose of this meeting is to hear a variance request for 48 Sisters View Drive and to review the new Boards and Commissions Handbook.

The meeting is open to the public.



Jennifer Tipton
Zoning Administrator

The Town of Black Mountain is committed to providing accessible facilities, programs and services for all people in compliance with the Americans with Disabilities Act (ADA). Should you need assistance or a particular accommodation for this meeting please contact, Jennifer Tipton, Zoning Administrator at (828) 669-2030 or by email at Jennifer.tipton@townofblackmountain.org

Posted to the Town Bulletin Board 12/02/19

www.townofblackmountain.org



LEGAL NOTICE

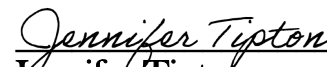
BLACK MOUNTAIN ZONING BOARD OF ADJUSTMENT

VARIANCE HEARING

Thursday, December 19, 2019 at 6:00 p.m.

The Black Mountain Zoning Board of Adjustment will meet on **Thursday, December 19, 2019 at 6:00 p.m.** in the Board Room in the Town Hall Building, 160 Midland Avenue, Black Mountain, NC. The purpose of this meeting is to hear a variance request for 48 Sisters View Drive, further identified as PIN #0618-45-8043.00000 to reduce the rear yard setback from 30 feet to 20 feet.

The meeting is open to the public.



Jennifer Tipton
Zoning Administrator

The Town of Black Mountain is committed to providing accessible facilities, programs and services for all people in compliance with the Americans with Disabilities Act (ADA). Should you need assistance or a particular accommodation for this meeting please contact, Jennifer Tipton, Zoning Administrator at 419-9373 or by email at Jennifer.tipton@townofblackmountain.org

*Posted to the Town Bulletin Board 12/02/19
Published in the Black Mountain News 12/05/19 and 12/12/19*

www.townofblackmountain.org



**Zoning Board of Adjustment Regular Meeting
December 19, 2019**

PROPOSED AGENDA

I. CALL TO ORDER

- Welcome
- Determination of Quorum

II. ADOPTION OF AGENDA

- **Motion:** To adopt the agenda as presented [or as amended]

III. ADOPTION OF MINUTES

- **Motion:** To adopt the minutes of September 19, 2019 as written [or as amended]

IV. OLD BUSINESS

V. NEW BUSINESS

- Variance Request for 48 Sisters View Drive
- New Boards and Commissions Handbook

VI. COMMUNICATION FROM ZONING BOARD OF ADJUSTMENT

VII. COMMUNICATION FROM STAFF

VIII. ADJOURNMENT

**TOWN OF BLACK MOUNTAIN
ZONING BOARD OF ADJUSTMENT**

The Black Mountain Zoning Board of Adjustment held its regular meeting on Thursday, September 19, 2019, 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:

Cheryl Milton, Chair
John DeWitt, Vice Chair
Ted Mattson
Bob Osmundsen
Janet McKimpson, Alternate
Charlotte McRanie, Alternate
Greg Feightner, Alternate

Absent:

Rebecca Harris

Staff:

Jennifer Tipton, Zoning Administrator
Ron Sneed, Town Attorney

The meeting was called to order at 6:04 p.m. and duly constituted and opened for business with a quorum of four (4) regular members and three (3) alternates.

II. ADOPTION OF AGENDA

Bob Osmundsen made a motion to adopt the agenda as presented. The motion was seconded by John DeWitt and approved by a vote of 5-0.

III. ADOPTION OF MINUTES

John DeWitt made a motion to adopt the minutes of August 15, 2019 as written. The motion was seconded by Greg Feightner and approved by a vote of 5-0.

IV. OLD BUSINESS

None.

V. NEW BUSINESS

1. Variance Request for 58 Old Lafayette Lane

Ms. Tipton went over the staff report for the request for eaves to encroach into the allowable setbacks. The Land Use Code allows eaves to encroach eighteen inches but the applicant is asking to encroach an additional one foot and three-sixteenths inch on the south side and an additional one foot and six and three quarter inches on the north side. Other than the eaves encroaching, the plan conforms to all other setback requirements.

Kevin Raywood, 9374 Promontory Circle, spoke about the Settings Design Review Board requirements and they require thirty inches of overhang. The encroachment would not exceed the thirty inch requirement from the Settings DRB. The north side eave will be approximately forty-two feet from the street and the south side eave will be approximately forty-eight feet from the

Zoning Board of Adjustment Regular Meeting
September 19, 2019

road. The request is only for the eaves and there will be nothing extending from the eaves to the ground.

Ms. Tipton presented the following evidence:

Exhibit A: Staff Report (3 pages)

Exhibit B: Application for Variance (10 pages)

Exhibit C: Receipt of Payment

Exhibit D: Buffer Map

Exhibit E: List of Property Owners

Exhibit F: Notice of Variance Request

Exhibit G: 2015 Aerial Map

Exhibit H: Picture of Property Posting

The board made the following findings of fact:

1. There are unnecessary hardships because of the covenants of the Settings Development and the shape of the lot and that there is a stream on the lot.
2. The hardship results from conditions that are peculiar to the property because of the shape and size of the lot and the stream that is located on the lot.
3. The hardship did not result from actions taken by the applicant as the lot was already platted and the stream was already in existence.
4. The requested variance is consistent with the spirit, purpose and intent as it will allow the applicant to construct a single family residence similar to other residences in the area and the public safety is secured.

John DeWitt made a motion to grant the variance. The motion was seconded by Ted Mattson and approved by a vote of 5-0.

2. Training Session with Town Attorney

Ron Sneed provided training to the board. He provided each member with a packet of information. Attorney Sneed went over quasi-judicial proceedings, authority, evidence, types of hearings, standing, and conflicts of interest.

VI. COMMUNICATION FROM ZBA

None.

VII. COMMUNICATION FROM STAFF

Ms. Tipton announced that there will be a training with the School of Government at the Buncombe County Administration building on October 24th at 1:00 p.m. and to respond by October 2nd if interested in attending.

VIII. ADJOURNMENT

John DeWitt made a motion to adjourn at 7:17 p.m. The motion was approved by consensus with a vote of 5-0.

Prepared by:

Cheryl Milton, Chair

Jennifer Tipton, Zoning Administrator

Rebecca Harris, Secretary

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

Case No: V-19-04

Case Name: 48 Sisters View Dr

Hearing Date: December 19, 2019

Procedure: Zoning Board of Adjustment

Address of Variance Request:

48 Sisters View Drive
Black Mountain, NC 28711
PIN #0618-45-8043.00000

Applicant:

Dale & Gina Nelson
12005 Middlebury Drive
Tampa, FL 33626

Request:

The applicant is seeking a variance to reduce the required rear setback of 30' (thirty feet) to 20' (twenty feet).

City Staff:

Jennifer Tipton, Zoning Administrator

Contents of the Report:

Report Detail
Exhibit 1 – Variance Application (3 pages)
Exhibit 2 – Copy of Receipt
Exhibit 3 – Buffer Map of Property Owners within 200'
Exhibit 4 – List of Property Owners within 200'
Exhibit 5 – Notice to Property Owners within 200'
Exhibit 6 – Aerial Map
Exhibit 7 – Picture of Posting of Property

I. SUMMARY OF REQUEST

The applicant is proposing to reduce the required rear setback of 30' to 20'.

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

This property is zoned CR-1 (conservation residential) and required setbacks are as follows:

4.6.1.3 Dimensional requirements (CR-1).

Residential Uses	Density and Lot Size			Minimum Yard Requirements			Max Height
	Min. Lot Size/Max Density	Min. Width (ft.)	Min. Depth (ft.)	Front Setback (ft.)	Side Setback (ft.)	Rear Setback (ft.)	Structure Height (ft.)
	1 acre/(43,560 sf) 1 DUA	80 (15 ft. at street)	100	30 (25 steep hillside)	10	30	35

The surrounding properties are zoned and developed for residential use.

	North	South	East	West
Adjacent Zoning Designation	CR-1	CR-1	CR-1	CR-1
Adjacent Land Uses	Residential (single-family)	Residential (single-family)	Residential (single-family)	Residential (single-family)

Existing Conditions

The site is located in the Settings of Black Mountain. The existing grade of the site is 47.47%. There is access to the lot from Sisters View Drive. The existing lot is .93 acres and has a part of a stream on the southwest corner of the lot and a portion of a stream on the southeast corner of the lot. A variance is not being requested of the stream buffer at this time.

IV. NOTIFICATION

Notice of the variance request and hearing was mailed to 10 property owners within 200 feet of the project site. Public notice was posted on the Town bulletin board on December 2, 2019 and on the Town of Black Mountain website on December 2, 2019. Legal notice appeared in the Black Mountain News the weeks of December 5, 2019 and December 12, 2019. The property was posted with a notice listing the time and date of the hearing.

V. ANALYSIS

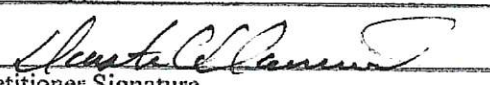
The applicant owns a vacant lot in the Settings of Black Mountain. The owners are looking to build a single-family residence, which is a permitted use, and is a similar land use of neighboring properties. Due to the steepness of the lot and the required setbacks, the applicant is seeking to reduce the rear setback from 30' to 20' to avoid the steeper slope on the west side of the property which would require a more extensive foundation and cause the foundation to increase in height and be visible from the road and also would not allow access from the basement to the grade.

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

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

Staff's analysis is that single family residences are a permitted use by right in the CR-1 district, the house will conform to all other setbacks.

VARIANCE APPLICATION www.townofblackmountain.org

PROPERTY OWNER INFORMATION		
Owner Name DALE & GINA NELSON		
Owner Address (Number, Street, City, State, ZIP) / CURRENT 48 SISTERS VIEW DR / 12005 MIDDLEBURY DR TAMPA FL 33626		
Home Phone	Cell Phone (813) 610-6011	Email Address dalenelson49@aol.com
APPLICATION FOR VARIANCE		
I request a variance/variances from the following provisions of the ordinance:		
Section Number(s): 4.6	Section Title(s): ZONING REG. BY DISTRICT	
Subsection letter(s) and/or number(s): 4.6.1.3	Subsection Title(s): DIMENSIONAL REQUIREMENTS	
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): REAR YARD SETBACK FOR CR-1 IS 30'. REQUESTING IT BE REDUCED TO 20'.		
PROPERTY INFORMATION		
Parcel Number 0618-45-8043	Current Zoning CR-1	Acreage .93
Address 48 SISTERS VIEW DR.		
Average Slope % 25%	Use of Property RESIDENTIAL	
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 HOUSTON HAMMOND 11/25/2019
OFFICE USE ONLY		
Date Received: 11/25/19	Fee: \$350.00 Cash: ☐ Check: ☒ # 8797 Credit: ☐	
Case Number: V-04-19	Meeting Date: December 16, 2019	

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

VARIANCE BURDEN OF PROOF

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

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

1. Indicate how an unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

REAR SETBACK = 30'. REQUESTING A REDUCTION TO 20'. IF HOUSE
LOCATION IS 30' FROM REAR LOT LINE IS OBSERVED THIS
WILL REQUIRE THE HOUSE BE MOVED 10' TO THE WEST, THUS
REQUIRING AN EXTENSIVE FOUNDATION & RESULTING COSTS.

2. Indicate how the hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public may not be the basis for granting a variance.

WEST OF HOUSE, THE PROPERTY SLOPES INCREASE.
MOVING THE HOUSE "DOWN THE HILL" TO THE WEST WILL
INCREASE FOUNDATION HEIGHT. RESULTING IN INCREASED COST,
NO ACCESS TO GRADE FROM BASEMENT AND POTENTIALLY
EFFECTING BUILDING HEIGHT.

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

STEEP SLOPES OCCUR WEST OF HOUSE & WOULD BE
MORE VISIBLE FROM STREET. ADJACENT PROPERTY IS
A POWER LINE EASEMENT.

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

REAR SETBACK DOES NOT AFFECT ANOTHER
PROPERTY OWNER AND IMPROVES HOUSE PLACEMENT.

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

RECEIPT

Date: 11/25/19

Amount Paid: 350

Customer: Home Sweet Home Land Management LLC

For: Variance application - 48 Sisters View Dr

Balance:

0

J. J. J. J. J.

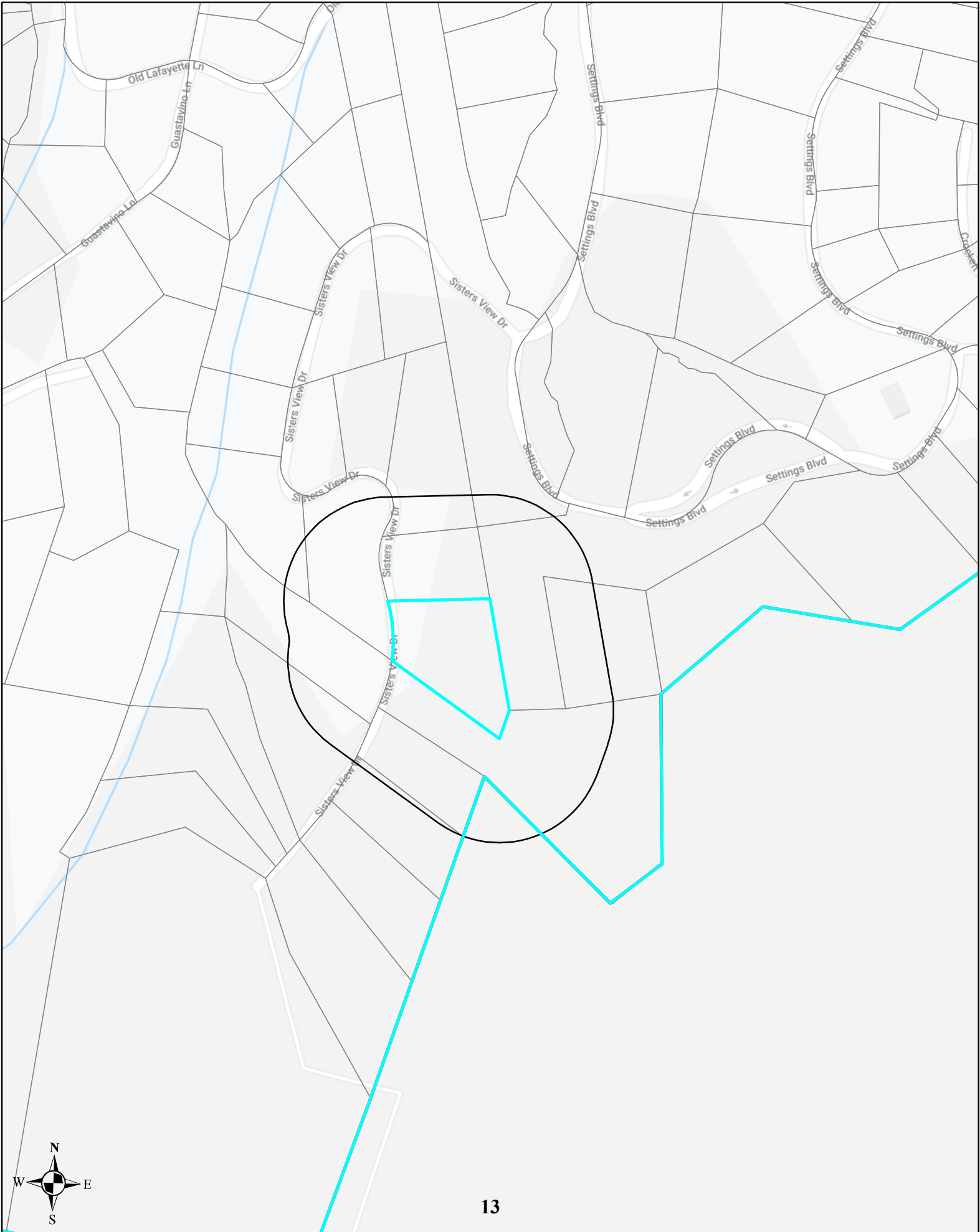
Received by:

check # 8797



TOWN OF BLACK MOUNTAIN
Building, Planning & Zoning
160 MIDLAND AVE.
BLACK MOUNTAIN, NC 28711
(828) 419-9300

48 Sisters View Drive Buffer Map



48 Sisters View Dr - Property Owners within 200'

Name	Address	City	State	Zip	PIN #	
Dale & Gina Nelson	12005 Middlebury Dr	Tampa	FL	33626	0618-45-8043	
Rainbow Riku LLC	85 Avenue De La Mer Unit 1103	Palm Coast	FL	32137	0618-45-8119	Constance S Ritter
Roderick A & Sheryl Legier Gruenig	1027 Whitetail Dr	Mandeville	LA	70448	0618-45-8403	
Settings of Black Mountain Association	PO Box 580	Arden	NC	28704	0618-45-8690	IPM Corp of Brevard Inc
Settings of Black Mountain Association	PO Box 580	Arden	NC	28704	0618-55-2262	IPM Corp of Brevard Inc
Jaiminkumar Patel	4160 Martin Fish Pond St	Hickory	NC	28602	0618-55-1034	
Settings of Black Mountain Association	PO Box 580	Arden	NC	28704	0618-44-9882	IPM Corp of Brevard Inc
Settings of Black Mountain Association	PO Box 580	Arden	NC	28704	0618-33-7658	IPM Corp of Brevard Inc
Scott A Breitkopf & Cathleen R Pratt	8668 Klondike Peak Mnr	Boynton Beach	FL	33473	0618-44-7740	
Maryanne Adams	240 W Inlet Rd	Ocean City	NJ	8226	0618-44-7890	
James K & Jana R Simpson III	2404 Spring Hill Ave Apt 116	Mobile	AL	36607	0618-44-5853	
James Knox & Jana Robinson Simpson III	2404 Spring Hill Ave Apt 116	Mobile	AL	36607	0618-45-5075	
Garry A & Nancy J Goudy	45 Sisters View Dr	Black Mountain	NC	28711	0618-45-6241	
Catherine Coveney & A D McNaghten	1244 Kingsley Circle NE	Atlanta	GA	30327	0618-45-4351	



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: **December 2, 2019**

TO: **Property Owner**

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

Name of owner and address of the real estate affected by the proposed variance:

**Dale & Gina Nelson
48 Sisters View Drive**

Property Description/PIN #: **0618-45-8043.00000**

Current Zoning Classification: **CR-1**

This property is currently used for the purpose of: **vacant residential**

The variance is requested to allow the property owner to:

Rear yard setback for CR-1 is 30'. Requeusting it be reduced to 20'.

The applicant believes that the variance be granted for the following reasons:

See attached.

A public hearing will be held on Thursday, December 19, 2019 @ 6:00 p.m. in the Board Room of Town Hall at 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.

CERTIFICATE OF MAILING

This is to certify that the foregoing document (**NOTICE OF VARIANCE REQUEST FOR 48 SISTERS VIEW DRIVE**) has been duly served by depositing a copy of the same in the United States Mail, first-class, postage pre-paid, to the following:

Dale & Gina Nelson
12005 Middlebury Drive
Tampa, FL 33626

Rainbow Riku LLC
c/o Constance S Ritter
85 Avenue De La Mer Unit 1103
Palm Coast, FL 32137

Roderick A & Sheryl Legier Gruenig
1027 Whitetail Drive
Mandeville, LA 70448

Settings of Black Mountain Assoc
c/o IPM Corp of Brevard Inc
PO Box 580
Arden, NC 28704

Jaiminkumar Patel
4160 Martin Fish Pond St
Hickory, NC 28602

Scott A Breitkopf & Cathleen Pratt
8668 Klondike Peak Mnr
Boynton Beach, FL 33473

Maryanne Adams
20 W Inlet Rd
Ocean City, NJ 08226

James K & Jana R Simpson III
2404 Spring Hill Ave Apt 116
Mobile, AL 36607

Garry A & Nancy J Goudy
45 Sisters View Drive
Black Mountain, NC 28711

Catherine Covey & A D McNaghten
1244 Kinsley Circle NE
Atlanta, GA 30327


Jennifer Tipton, CZO
Zoning Administrator

12/2/19
Date

Buncombe County, North Carolina

I certify that the following person personally appeared before me this day, acknowledging to me that she signed the foregoing document: Notice of Variance Request
48 Sisters View Dr

Date: 12/2/2019

Notary Signature: Cortney N. Kidd

Notary Printed Name: Cortney N. Kidd

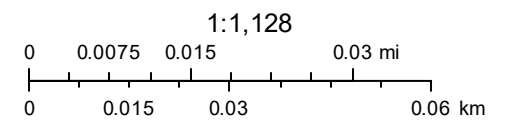
My Commission Expires: 5/17/2020



Buncombe County



November 25, 2019



VARIANCE REQUEST

**THURSDAY,
DECEMBER 19,
2019 @ 6:00 P.M.**

*Town Hall
160 Midland Avenue
Black Mountain, NC 28711
828-419-9373 for more information*

12/02/2019 15:03