



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 June 18, 2020
Date: June 5, 2020

The **Town of Black Mountain Zoning Board of Adjustment** will meet on **Thursday, June 18, 2020, 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 January 16, 2020;
3. Appeal of Zoning Administrators Decision;
4. Variance Request for 400 S Cherokee Avenue; and
5. Variance Request for 714 Rhododendron Avenue.

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
Josh Harrold, Town Manager



PUBLIC NOTICE

BLACK MOUNTAIN ZONING BOARD OF ADJUSTMENT

REGULAR MEETING

Thursday, June 18, 2020, at 6:00 p.m.

The Black Mountain Zoning Board of Adjustment will meet for their regular monthly meeting on **Thursday, June 18, 2020, at 6:00 p.m.** at Town Hall, 160 Midland Avenue, Black Mountain, N.C. The purpose of this meeting is to consider a variance request for 714 Rhododendron Avenue to reduce the side setback from 10' to 2.5'; to consider a variance request for 400 S Cherokee Avenue to reduce the side setback from 10' to 9.5'; and to hear an appeal from the decision of the Zoning Administrator regarding heavy equipment service at 410 Blue Ridge Road.

The meeting is open to the public and social distancing measures will be in place. No more than ten people will be allowed in the board room at one time.

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 06/01/2020

www.townofblackmountain.org



**Zoning Board of Adjustment Regular Meeting
June 18, 2020**

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 from January 16, 2020 as written [or as amended]

IV. OLD BUSINESS

V. NEW BUSINESS

- Appeal of Zoning Administrator's Decision – 6:00 p.m.
- Variance Request for 400 S Cherokee Avenue – 6:45 p.m.
- Variance Request for 714 Rhododendron Avenue – 7:30 p.m.

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, January 16, 2020, 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
Rebecca Harris, Secretary
Ted Mattson
Bob Osmundsen
Janet McKimpson
Charlotte McRanie
Greg Feightner

Staff:

Jennifer Tipton, 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 and three (3) alternates. Member Rebecca Harris arrived at 6:15 p.m.

II. ADOPTION OF AGENDA

Agenda was not adopted.

III. ADOPTION OF MINUTES

No minutes were adopted.

IV. OLD BUSINESS

None.

V. NEW BUSINESS

1. Review of New Boards and Commissions Handbook

The board was given the new boards and commissions handbook. Chair Cheryl Milton spoke about social media. There was a differing of opinions among members regarding the social media policy. Jennifer Tipton asked that everyone sign that they had received the handbook and return to her.

VI. COMMUNICATION FROM ZBA

None.

VII. COMMUNICATION FROM STAFF

None.

VIII. ADJOURNMENT

Chair Cheryl Milton adjourned the meeting at 6:22 p.m.

Zoning Board of Adjustment Regular Meeting
January 16, 2020

Prepared by:

Cheryl Milton, Chair

Jennifer Tipton, Zoning Administrator

Rebecca Harris, Secretary

Zoning Board of Adjustment Regular Meeting
January 16, 2020



Town of Black Mountain
Building, Planning and Zoning

160 Midland Avenue ♦ Black Mountain ♦ North Carolina ♦ 28711
Phone: 828-419-9300 ♦ Fax: 828-669-2030 ♦ TDD: 1-800-735-2962

June 3, 2020

Chair to the Board of Adjustment
160 Midland Avenue
Black Mountain, NC 28711

VIA Email and Regular Mail

RE: Jeffery Hall (Hall's Towing and Recovery) Appeal to the Board of Adjustment

Dear Chair:

Pursuant to N.C.G.S. §160A-388 (b1)(5), please find enclosed the Record in the above referenced case, which I am transmitting to the Board of Adjustment. If you have any questions, please do not hesitate to contact me.

Sincerely,

Jennifer Tipton

Enclosure

CC: Mr. Jeffery Hall
Ronald E. Sneed, Esq.
Board of Adjustment Members
Jessica Trotman, Planning Director
Josh Harrold, Town Manager

BEFORE THE TOWN OF BLACK MOUNTAIN BOARD OF ADJUSTMENT
BUNCOMBE COUNTY

JEFFEREY HALL OF HALLS TOWING)
AND RECOVERY APPEAL OF ZONING)
ADMINISTRATOR’S DECISION)
410 BLUE RIDGE ROAD)
BLACK MOUNTAIN, NC 28711)

RECORD

Letter Dated February 11, 2020 re: decision	1
Land Use Code Section 4.6.3 (TR-4 Zoning District)	2
Land Use Code Section 1.2.3 (Definitions)	4
Appeal Application Dated	6
Legal Notice	7
Certificate of Service	8



Town of Black Mountain
Building, Planning and Zoning

160 Midland Avenue ♦ Black Mountain ♦ North Carolina ♦ 28711
Phone: 828-419-9300 ♦ Fax: 828-669-2030 ♦ TDD: 1-800-735-2962

February 11, 2020

Jeffrey Hall
PO Box 23
Black Mountain, NC 28711

Dear Mr. Hall,

This correspondence is in regards to your request for zoning approval to add heavy equipment repair services to Bud Hall Towing & Recovery located at 410 Blue Ridge Road. This parcel is zoned Town Residential (TR-4).

The business conducted at the aforementioned location includes towing, vehicle storage, recovery, and automotive repair and services. The current use is determined to be “automotive sales and service” and is a legally operating non-conforming use under the 2010 zoning ordinance.

Legally non-conforming uses are allowed to operate under updated zoning conditions provided the use operates continuously, does not change in use and does not increase or intensify the non-conformity. The current use does not include repair or services of heavy equipment.

The Land Use Code includes a separate and distinct use in the table of permitted uses for heavy equipment sales, rental and services and automotive services. The legally operating non-conforming use, therefore, does not include services related to heavy equipment.

The Land Use Code states in section 1.3.1 (B): A *nonconforming* use of land or buildings or structures shall not be changed to any new use other than a use listed as permitted or conditional within the district in which it is located.

Below is a table of uses allowed in the TR-4 zoning district.

PERMITTED BY RIGHT	ADDITIONAL REQUIREMENTS (see Chapter 5)	CONDITIONAL USES	SPECIAL USES
Government facilities Parks and open space areas Places of worship Public Utilities Single-Family Residences Two-family Residences (duplex)	Accessory Structures Agriculture Bed and Breakfast Homes Boarding House Camps, summer Conference Centers Family Care Homes Home Occupations Manufactured Homes (on individual lots) Market Gardens Recreation services, outdoor Secondary Dwellings	Bed and Breakfast Inns Cultural, Community Facilities Educational facilities Multi-family residential	Residential Special Use Developments: Conservation Subdivisions Cottage Housing (CHD) Residential Planned Unit Development (PUD) Manufactured Home Parks

This decision may be appealed to the Zoning Board of Adjustment within thirty (30) days of receipt of this notice.

If you have any additional questions please feel free to contact our office at (828) 419-9300, option 4.

Respectfully,

Jennifer Tipton CZO
Zoning Administrator

4.6.3 - Town residential district (TR-4).

4.6.3.1 Intent.

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.

4.6.3.2 Uses.

The chart below indicates the uses generally permitted in the TR-4 zoning district.

PERMITTED BY RIGHT	ADDITIONAL REQUIREMENTS (see Chapter 5)	CONDITIONAL USES	SPECIAL USES
Government facilities Parks and open space areas Places of worship Public Utilities Single-Family Residences Two-family Residences (duplex)	Accessory Structures Agriculture Bed and Breakfast Homes Boarding House Camps, summer Conference Centers Family Care Homes Home Occupations Manufactured Homes (on individual lots) Market Gardens Recreation services, outdoor Secondary Dwellings	Bed and Breakfast Inns Cultural, Community Facilities Educational facilities Multi-family residential	<i>Residential Special Use Developments:</i> Conservation Subdivisions Cottage Housing (CHD) Residential Planned Unit Development (PUD) Manufactured Home Parks

Exclusions: Correctional institutions, all uses not specifically enumerated

4.6.3.3 Dimensional requirements (TR-4).

Residential Uses	Density and Lot Size				Minimum Yard Requirements			Max. Height
	Min. Lot Size/Max. Density	Min. Width (ft.)	Min. St. Front (ft.)	Min. Depth (ft.)	Front Setback (ft.)	Side Setback (ft.)	Rear Setback (ft.)	Structure Height (ft.)

	¼ acre (10,890 sq. ft.) 4 DUA	40 (15 ft. at street)	15	80	20 (15 steep hillside)	10	15	35
Other Uses	Minimum Lot Size				Minimum Yard Requirements			Max. Height
	Min. Lot Size (sq. ft.)	Width (ft.)	St. Front (ft.)	Min Depth (ft.)	Front Setback (ft.)	Side Setback (ft.)	Rear Setback (ft.)	Structure Height (ft.)
	¼ acre (10,890 sq. ft.)	40 (15 ft. at street)	15	80	20 (15 steep hillside)	10	15	35

*A density bonus may be available for developments that include affordable housing units in accordance with chapter 12.

([Ord. No. O-17-05](#), § 2, 6-12-2017)

Market gardening: Cultivating herbs, plants, fruits, flowers, vegetables and home-made crafts for sale through local markets, including but not limited to tailgate markets, farmers markets, florists and produce stands, or for sale to restaurants or other establishment which serve them to the public.

Nurseries: Land or structures used to raise flowers, shrubs, and plants for sale, including greenhouses.

Alley: A service roadway providing a secondary means of public access to abutting property and not intended for general traffic circulation.

Amusements: Establishments engaged in providing entertainment for a fee, including arcades, bowling alleys, billiard or pool halls, miniature golf and any coin-operated machines or devices whether mechanical or electronic for use as a game; entertainment or amusement.

Animal boarding or kennel services: A commercial establishment in which dogs or other domesticated animals are housed, groomed, bred, boarded, trained or sold, for a fee or compensation.

Animal grooming services: Establishments primarily engaged in providing grooming services to domesticated animals.

Animal hospital: Establishment of licensed veterinary practitioners primarily engaged in the practice of veterinary medicine, dentistry, or surgery for animals; and establishments primarily engaged in providing testing services for licensed veterinary practitioners.

Animal or veterinary clinic: A place where animals are given medical care and the boarding of animals is limited to short-term care incidental to the hospital use.

Apartment unit: One or more rooms with a private bath and kitchen facilities comprising an independent self-contained dwelling in a building containing three or more dwelling units.

Art studio: The workshop of an artist, sculptor, photographer or craftsman.

Automobile services or stations: (Also see "neighborhood fueling facility" which is distinct from this category) any building, garage, land area, or other premises or portion thereof, used for dispensing or selling vehicular fuels, or servicing and repair of automobiles. This term shall include:

Automobile wash, car wash or detail shop: Any building or premises or portions thereof used for cleaning, washing, and/or waxing automotive vehicles, such as passenger cars, trucks, and vans, and trailers.

Automobile body shop: Any premises which repairs, paints or works on the exterior of vehicles, including window repair and tinting.

Audio installation: Any premise which installs or repairs vehicle audio systems.

Automobile rentals: Establishments primarily engaged in renting passenger cars without drivers, generally for short periods of time.

Automobile sales: The use of any building, land area, or other premises for the display and sale of new or used automobiles, light trucks, vans, trailers, or recreational vehicles.

Automobile wrecking/salvage: An establishment that cuts up, compresses or otherwise disposes of motor vehicles.

Awning: A structure made of cloth, metal, or other material affixed to a building in such a manner that it shades windows or doors below, but is not a constructed canopy.

Bakery, retail: An establishment primarily engaged in the sale of bakery products. The products may be purchased from others or made on the premises.

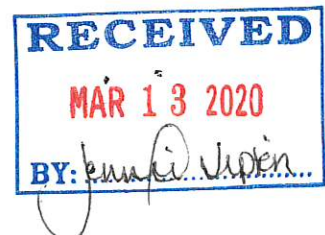
Bakery, wholesale: Establishments primarily engaged in manufacturing fresh or frozen bread and bread-type rolls and fresh cakes, pies, pastries and other similar "perishable" bakery products for wholesale.

TOWN OF BLACK MOUNTAIN PLANNING AND DEVELOPMENT SERVICES

APPEAL FORM www.townofblackmountain.org

APPELLANT INFORMATION	
Name: <u>Halls Towing & Recovery INC (Jeff Hall)</u>	
Address: <u>412 Blue Ridge</u>	
Phone #: <u>828 669 7106</u>	Email: <u>hallsTowingRecovery@gmail.com</u>
APPEAL FROM DECISION OF ZONING ADMINISTRATOR	
This is an appeal from a decision of the Zoning Administrator, to wit:	
<u>TR 4 Gravel Saturated Truck Auto</u>	
<u>Repair - salvage yard - Towing Service</u>	
<u>Heavy Sales & Services Shop</u>	
AFFECTED PROPERTY	
Address: <u>412 Blue Ridge Road</u>	
PIN #: <u>0009-91-5210</u>	Zoning Classification: <u>TR4</u>
GROUNDS FOR APPEAL	
<u>Have been Gravel Saturated IN</u>	
<u>for years - have been working on</u>	
<u>Heavy Equipment All Along</u>	
STATEMENT AND SUBSTANTIATION OF STANDING	
ACKNOWLEDGEMENT	
<u>[Signature]</u> Appellant	Date: <u>3/13/2020</u>
Attorney for Appellant	Date:
OFFICE USE ONLY	
Date Received: <u>3/13/2020</u>	Received by: <u>Jennifer Vepien</u>

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





LEGAL NOTICE

BLACK MOUNTAIN ZONING BOARD OF ADJUSTMENT

EVIDENTIARY HEARING

Thursday, June 18, 2020 at 6:00 p.m.

The Black Mountain Zoning Board of Adjustment will meet on **Thursday, June 18, 2020 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 an appeal from the Zoning Administrator's determination the use of heavy equipment service and repair at 410 Blue Ridge Road, further identified as PIN #0609-91-5276.00000.

The meeting is open to the public, however, social distancing measures will be in place and no more than ten (10) people will be allowed in the room at one time.

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 06/01/2020
Published in the Black Mountain News 06/04/2020 and 06/11/2020

www.townofblackmountain.org

CERTIFICATE OF SERVICE

This is to certify that the foregoing Record has been duly served by depositing a copy of the same in the United States Mail, first-class, postage pre-paid, as well as by electronic mail, to the following:

Mr. Jeffery Hall
PO Box 23
Black Mountain, NC 28711

Cheryl Milton
Member of Board of Adjustment
202 Mountain Street
Black Mountain, NC 28711
bullmilt@aol.com

John DeWitt
Member of Board of Adjustment
169 Hilltop Road
Black Mountain, NC 28711
drjohndewitt@me.com

Rebecca Harris
Member of Board of Adjustment
417 Avena Road
Black Mountain, NC 28711
rebecca@valleytruckservice.net

Robert Osmundsen
Member of Board of Adjustment
306 Chapel Road
Black Mountain, NC 28711
bob.osmundsen@gmail.com

Ted Mattson
Member of Board of Adjustment
1 Village Way
Black Mountain, NC 28711
matt53@bellsouth.net

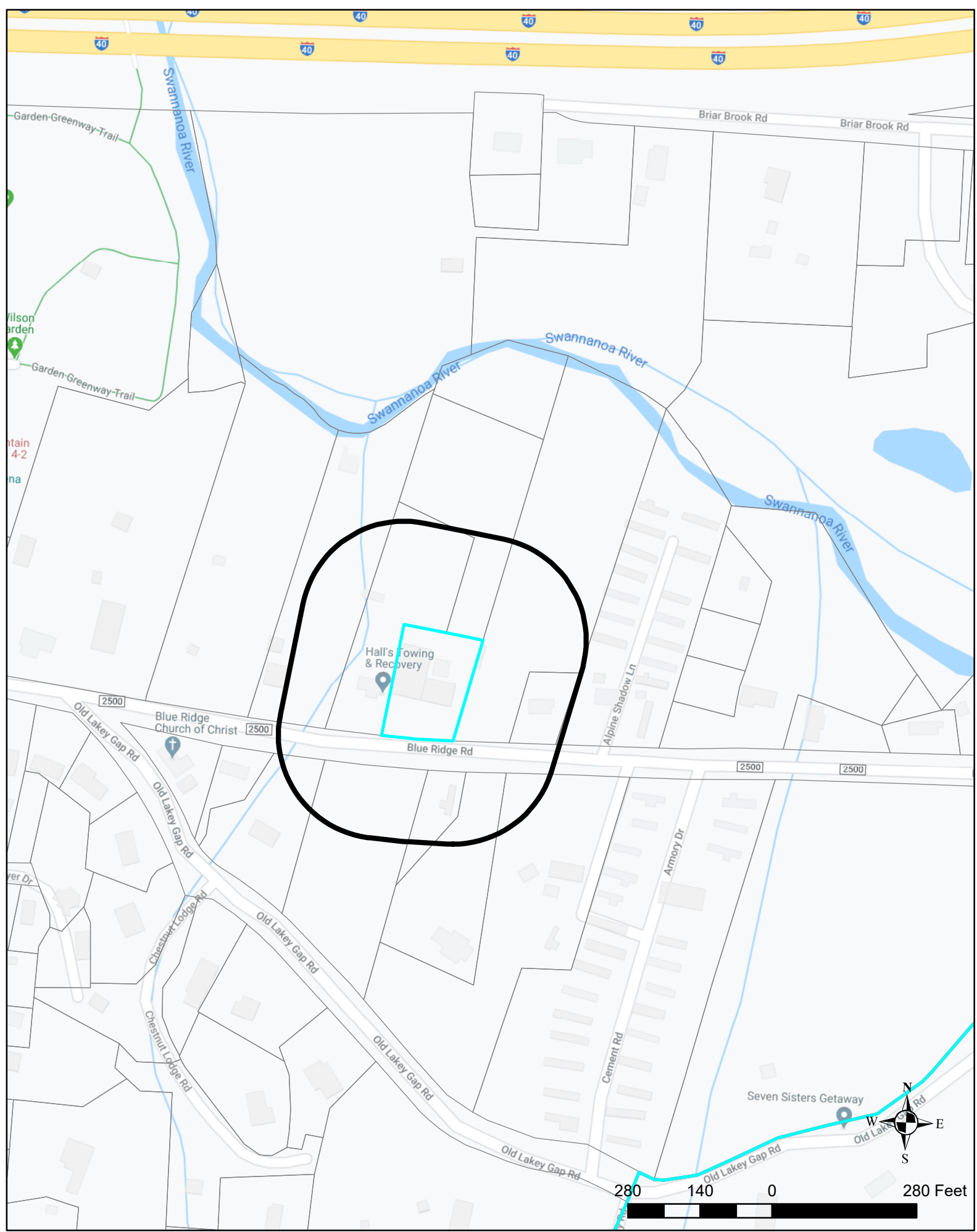
Janet McKimpson
Alternate for Board of Adjustment
15 Lake Avenue
Black Mountain, NC 28711
alamomine@yahoo.com

Greg Feightner
Alternate for Board of Adjustment
559 Blue Ridge Road
Black Mountain, NC 28711
greg.feightner@gmail.com

Jessica Trotman
Planning Director
160 Midland Avenue
Black Mountain, NC 28711
jessica.trotman@townofblackmountain.org

Josh Harrold
Town Manager
160 Midland Avenue
Black Mountain, NC 28711
josh.harrold@townofblackmountain.org

Hall 200' Buffer



<u>Name</u>	<u>Address</u>	<u>City</u>	<u>State</u>	<u>Zip</u>	<u>PIN #</u>
Halls Towing and Recovery Inc	PO Box 23	Black Mountain	NC	28711	0609-91-5276
Jeffery Dalton Hall	414 Blue Ridge Road	Black Mountain	NC	28711	0609-91-8533
George W Drummon and Anglea B Drummond	63 Highland Drive	Black Mountain	NC	28711	0609-91-7291
M & M Mountain Properties LLC	PO Box 1060	Black Mountain	NC	28711	0609-91-9491
Arnold Jones and Mary Sue Jones	405 Blue Ridge Road	Black Mountain	NC	28711	0609-90-7729
Deborah Jones Ogle and Larry K Ogle	407 Blue Ridge Road	Black Mountain	NC	28711	0609-90-6817
Christine A Kientz	111 Beechtree Drive	Black Mountain	NC	28711	0609-91-5072
Scotty A Wagner	739 N Morgan Branch Rd	Candler	NC	28715	0609-90-4829
Robt L Ellis and Laverne J Ellis	16 Old Lakey Gap Road	Black Mountain	NC	28711	0609-90-2947
Jeffery Dalton Hall	414 Blue Ridge Road	Black Mountain	NC	28711	0609-91-4501
Jeffery D Hall	PO Box 23	Black Mountain	NC	28711	0609-91-5417
Jeffery D Hall	PO Box 23	Black Mountain	NC	28711	0609-91-6453



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 APPEAL

(REGARDING NEIGHBORS WITHIN 200 FEET OF PROPERTY)

DATE: **June 4, 2020**

TO: Property Owner

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

This is an appeal from a decision of the Zoning Administrator, to wit:

TR-4 grandfathered truck auto repair - salvage yard - towing service - heavy sales and services shop.

Address, PIN # and Zoning Classification of Property Affected: **410 Blue Ridge Road
0609-91-5276**

Name, Address and Telephone Number of Party Appealing: **Halls Towing and Recovery
(Jeff Hall)
412 Blue Ridge Road, Black Mountain, NC 28711
828-669-7106**

Brief Statement of Grounds for Appeal: **Have been grandfathered in for years - have been working on heavy equipment all along.**

An appeal hearing in the nature of certiorari will be held on Thursday, June 18, 2020 @ 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 APPEAL OF ZONING ADMINISTRATORS DECISION) has been duly served by depositing a copy of the same in the United States Mail, first-class, postage pre-paid, to the following:

Halls Towing and Recovery Inc
PO Box 23
Black Mountain, NC 28711

Jeffery Dalton Hall
414 Blue Ridge Road
Black Mountain, NC 28711

George W & Angela B Drummond
63 Highland Drive
Black Mountain, NC 28711

M & M Mountain Properties LLC
PO Box 1060
Black Mountain, NC 28711

Arnold & Mary Sue Jones
405 Blue Ridge Road
Black Mountain, NC 28711

Deborah Jones & Larry K Ogle
407 Blue Ridge Road
Black Mountain, NC 28711

Christine A Kientz
111 Beechtree Drive
Black Mountain, NC 28711

Scotty A Wagner
739 N Morgan Branch Road
Candler, NC 28715

Robt L & Laverne J Ellis
16 Old Lakey Gap Road
Black Mountain, NC 28711

Jennifer Tipton, CZO
Zoning Administrator

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: _____.

Date: _____

Notary Signature: _____

Notary Printed Name: _____

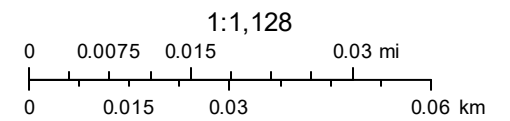
(Official Seal)

My Commission Expires: _____

Buncombe County



June 2, 2020



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

Case No: V-20-02

Case Name: 400 S Cherokee Ave

Hearing Date: June 18, 2020

Procedure: Zoning Board of Adjustment

Address of Variance Request:

400 S Cherokee Avenue
Black Mountain, NC 28711
PIN #0619-07-2017.00000

Applicant:

Marion Wisner Revocable Living Trust
400 Thomas Street
Oxford, MS 38655

Request:

The applicant is seeking a variance to reduce the side setback from ten feet (10') to nine and a half feet (9.5') to subdivide the property.

City Staff:

Jennifer Tipton, Zoning Administrator

Contents of the Report:

Report Detail
Exhibit 1 – Variance Application (2 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 – Certificate of Mailing
Exhibit 7 – Aerial Map
Exhibit 8 – Picture of Posting of Property
Exhibit 9 – Staff Report
Exhibit 10 – Legal Notice
Exhibit 11 – Section 4.6.4.3

I. SUMMARY OF REQUEST

The applicant is requesting to reduce the west side setback from ten feet (10') to nine and a half feet (9.5') to subdivide the property and the two existing structures.

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 UR-8 (urban residential) and required setbacks are as follows:

4.6.4.3 Dimensional requirements (UR-8).

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.)
Major Subdivisions	1/8 acre (5,446 sf) 8 DUA	15 ft	None	20 (15 steep hillside)	10	15	35
All Other Residential	5,000 sf	15 ft	None	20 (15 steep hillside)	10	15	35

The surrounding properties are zoned and developed for residential use.

	North	South	East	West
Adjacent Zoning Designation	UR-8	UR-8	UR-8	UR-8
Adjacent Land Uses	Residential (single-family)	Residential (single-family)	Residential (single-family)	Residential (single-family)

Existing Conditions

The subject property is a .36 acre parcel in the UR-8 zoning district. The average slope of the lot is 8.99%. Both residential structures were constructed in 1953 according to Buncombe County tax records. Zoning for the Town of Black Mountain was not put into place until the early 1980's so the houses did not have to conform to any setbacks at the time of construction.

IV. NOTIFICATION

Notice of the variance request and hearing was mailed to 24 property owners within 200 feet of the project site. Public notice was posted on the Town bulletin board on June 1, 2020 and on the

Town of Black Mountain website on June 1, 2020. Legal notice appeared in the Black Mountain News the weeks of June 4, 2020 and June 11, 2020. The property was posted with a notice listing the time and date of the hearing.

V. ANALYSIS

The applicant purchased the property in March of 2016. The property was transferred to the trust in September of 2018. The owner has done some renovations of the property and recently demolished part of the structure facing S Cherokee Avenue.

In order to subdivide the property, there must be ten feet (10') from the side of the structure to the property line with a total of twenty feet (20') between both structures).

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 twenty feet (20') is required between the structures to accommodate the required ten foot (10') side setbacks to be able to subdivide the property. The houses were constructed and in place prior to zoning requirements being in place for the Town of Black Mountain.

VARIANCE APPLICATION www.townofblackmountain.org

PROPERTY OWNER INFORMATION

Owner Name	The Marion F. Wisner Revocable Living Trust	Andrea Wisner, POA for Marion Wisner, Trustee
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Owner Address (Number, Street, City, State, ZIP) 400 S. Cherokee Ave., Black Mountain, NC 28805

Home Phone	Cell Phone 727-365-2209	Email Address amwisner@yahoo.com
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APPLICATION FOR VARIANCE

I request a variance/variances from the following provisions of the ordinance:

Section Number(s): Appendix A SECTION 4.6 **Section Title(s):** ZONING REGULATIONS BY DISTRICT
Subsection letter(s) and/or number(s): 4.6.4.3 **Subsection Title(s):** Dimensional requirements (UR-8).

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*):

We have applied for minor subdivision of the property. See survey. The southeast corner of the house on the west side of the property would be only 9' 3" from the new property line between the 2 houses. 2 feet farther north on that east side of the same house it's the full 10 feet from the line, so it's just that little bit of corner sunroom that's the issue as the house is laid out at an angle to the property lines.

PROPERTY INFORMATION

Parcel Number 0619-07-2017-00000	Current Zoning UR-8	Acreage 0.36 acres
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Address
400 S Cherokee Ave., Black Mountain NC 28711

Average Slope % Less than 30%	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.

	4/25/2020
Petitioner Signature	Date

OFFICE USE ONLY

Date Received:	Fee: \$350.00
	Cash: ☐ Check: ☐ # Credit: ☐

Case Number:	Meeting Date:
--------------	---------------

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

VARIANCE BURDEN OF PROOF

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

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

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

It seems that if we don't get a variance for those few inches in that one spot (corner of house), we will not be able to divide the property. We already have put over \$15,000 into dividing the property, and we have a buyer ready to buy the half that we are not keeping. We are not able to continue to maintain both houses. The house facing Cherokee is in poor condition and the buyer is ready to rehab it.

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.

-There already are two houses on the property and the way they are situated there is just that tiny bit of the -corner of the sunroom that is too close to the intended property line.

-

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.

When we purchased the property we weren't planning to divide it and didn't realize that in the future setbacks might be an issue.

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.

The property is of such a size that there is sufficient space around each of the houses that are to be separated. The two new lot sizes will be 9,430 square feet, Cherokee Ave. house, and 6,239 square feet, Hickory St. house. The 6,239 is the lot in question, still well over the required minimum of 5,000 required per zoning. Again, the requested variance is just a matter of no more than 9 inches at just one corner of the Hickory St. house.

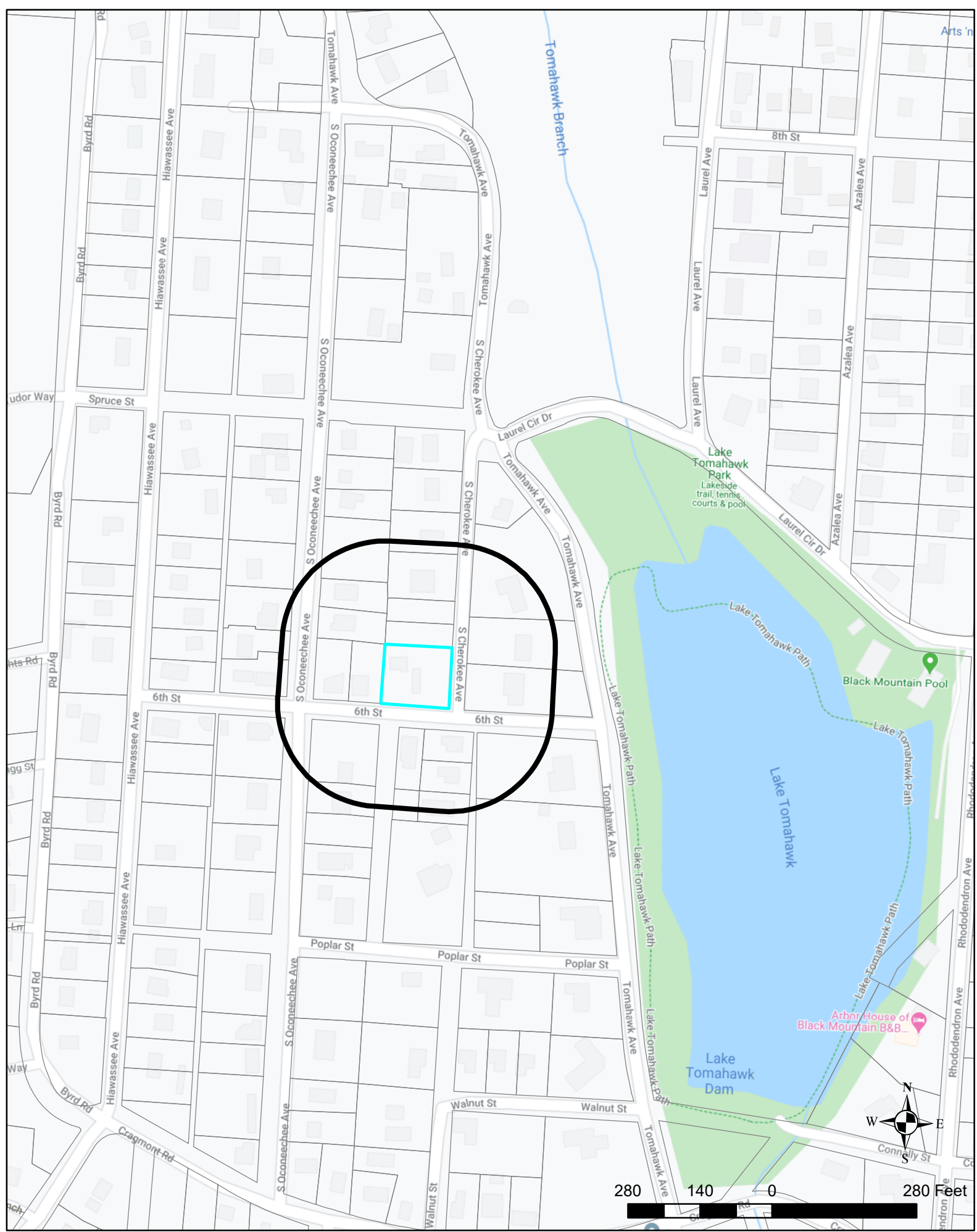
RECEIPT

Date: 4/27/2020 Amount Paid: 350
Customer: Andrea Wisner
For: variance application - 400 S Cherokee
Balance: Ø J. Upton
cc Received by:



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

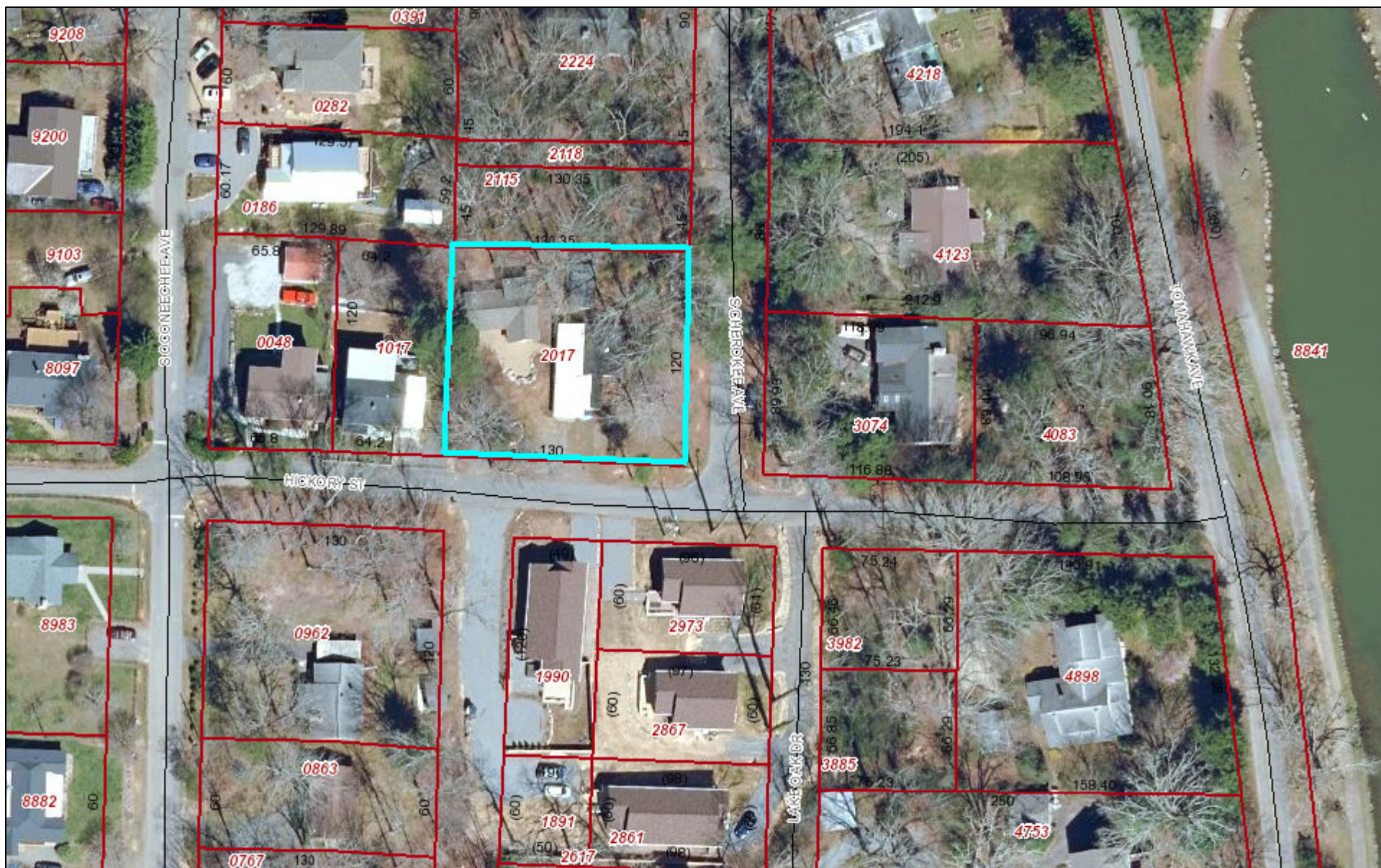
400 S Cherokee Avenue 200' Buffer



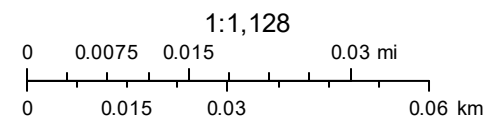
<u>Name</u>	<u>Address</u>	<u>City</u>	<u>State</u>	<u>Zip</u>	<u>PIN #</u>
Marion F Wisner Revocable Living Trust	55 Piney Mountain Dr., Apt. 516	Asheville	NC	28805	0619-07-2017
Virginie Cloutier Pomeroy & John Stewart Pomeroy	920 NC 9 Hwy	Black Mountain	NC	28711	0619-07-3074
Virginie Cloutier Pomeroy & John Stewart Pomeroy	920 NC 9 Hwy	Black Mountain	NC	28711	0619-07-4083
Margaret H Warren	407 Tomahawk Avenue	Black Mountain	NC	28711	0619-07-4123
J Hunter Mitchell	409 Tomahawk Avenue	Black Mountain	NC	28711	0619-07-4218
Jenna Leight Markwordt & David William Moller	412 S Cherokee Avenue	Black Mountain	NC	28711	0619-07-2324
Judy Schultz Hunt Living Trust	4890 Whispering Pine Way	Naples	FL	34103	0619-07-2224
Jason Corrado & Stacy Frulong Corrado	PO Box 1295	Black Mountain	NC	28711	0619-07-2118
Jason Corrado & Stacy Frulong Corrado	PO Box 1295	Black Mountain	NC	28711	0619-07-2115
Richard Garzarelli & K Elizabeth Garzarelli	313 Tomahawk Avenue	Black Mountain	NC	28711	0619-06-4898
Richard Garzarelli & K Elizabeth Garzarelli	313 Tomahawk Avenue	Black Mountain	NC	28711	0619-06-3982
Richard Garzarelli & K Elizabeth Garzarelli	313 Tomahawk Avenue	Black Mountain	NC	28711	0619-06-3885
Richard E Klessig GST Exempt Trust	500 Allison Ln	Moore	OK	73160	0619-06-4753
Andrew R Homrich & Jamie Dianne Homrich	309 Lake Oak Drive	Black Mountain	NC	28711	0619-06-2861
Andrew R Homrich & Jamie Dianne Homrich	309 Lake Oak Drive	Black Mountain	NC	28711	0619-06-1891
Carol Lorraine Tanner	311 Lake Oak Drive	Black Mountain	NC	28711	0619-06-2867
Robert E Sway & Harriette H Fulton	60 Lake Pt	Sautee Nacoochee	GA	30571	0619-06-2973
Sue Shelley-Williams & Robert J Williams	4191 Bay Beach Ln, Apt. 266	Fort Myers Beach	FL	33931	0619-06-1990
Christine B O'Connor	306 S Oconechee Ave	Black Mountain	NC	28711	0619-06-0863
Alfred Gardner & Margaret Gardner	107 Westwood Avenue	Swannanoa	NC	28778	0619-06-0962
Virginia Carr Alexander	402 Hickory Street	Black Mountain	NC	28711	0619-07-1017
Levon Lindsey & Mary L Lindsey	400 S Oconechee Avenue	Black Mountain	NC	28711	0619-07-0048
Rhea W Bockhorst & Anna Marcel De Hermanas	404 S Oconechee Avenue	Black Mountain	NC	28711	0619-07-0186
Patrick Forrest Dorsey & Jessica Alexander Dorsey	406 S Oconechee Avenue	Black Mountain	NC	28711	0619-07-0282
George L Foose & Lisa O Foose	384 Montevista Ave	Marion	NC	28752	0619-07-0391
Jerry M Cannon & Susan G Cannon	128 Woodside Ave	Narberth	PA	19072	0609-97-9200
Matthew B Howie	403 S Oconechee Avenue	Black Mountain	NC	28711	0609-97-9103
Jonathan E Douglas & Tiffany A Douglas	401 S Oconechee Avenue	Black Mountain	NC	28711	0609-97-8097
Toby D Ives & Sarah Broughton-Ives	313 S Oconechee Avenue	Black Mountain	NC	28711	0609-96-8983

[illegible]

400 S Cherokee Avenue Aerial Map - 2019



June 2, 2020





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: **June 4, 2020**

TO: **Property Owner**

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

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

**Marion Wisner Revocable Living Trust
400 S Cherokee Avenue**

Property Description/PIN #: **0619-07-2017**

Current Zoning Classification: **UR-8**

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

The variance is requested to allow the property owner to:

To be able to subdivide the property into two parcels that will each have an existing residence. One house sits at an angle and would be 9'3" from the proposed new property line rather than the required 10'.

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

To be able to subdivide to sell one half of the lot with the house that is in poor condition to someone who wants to rehab the house.

A public hearing will be held on June 18, 2020 @ 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 FOR 400 S CHEROKEE AVENUE) has been duly served by depositing a copy of the same in the United States Mail, first-class, postage pre-paid, to the following:

Marion F Wisner Revocable Living Trust
55 Piney Mountain Drive, Apt. 516
Asheville, NC 28805

Virginie Cloutier Pomeroy
John Stewart Pomeroy
920 NC 9 Hwy
Black Mountain, NC 28711

Margaret H Warren
407 Tomahawk Avenue
Black Mountain, NC 28711

J Hunter Mitchell
409 Tomahawk Avenue
Black Mountain, NC 28711

Jenna Leigh Markwordt
David William Moller
412 S Cherokee Avenue
Black Mountain, NC 28711

Jason Corrado
Stacy Frulong Corrado
PO Box 1295
Black Mountain, NC 28711

Judy Schultz Hunt Living Trust
4890 Whispering Pine Way
Naples, FL 34103

Carol Lorraine Tanner
311 Lake Oak Drive
Black Mountain, NC 28711

Richard Garzarelli
K Elizabeth Garzarelli
313 Tomahawk Avenue
Black Mountain, NC 28711

Andrew R Homrich
Jamie Dianne Homrich
309 Lake Oak Drive
Black Mountain, NC 28711

Richard E Klessig GST Exempt Trust
500 Allison Ln
Moore, OK 73160

Christine B O'Connor
306 S Oconeechee Avenue
Black Mountain, NC 28711

Robert E Sway
Harriette H Fulton
60 Lake Pt
Santee Nacoochee, GA 30571

Sue Shelley-Williams
Robert J Williams
4191 Bay Beach Ln, Apt. 266
Fort Myers Beach, FL 33931

Alfred & Margaret Gardner
c/o Charles Mumpower
107 Westwood Avenue
Swannanoa, NC 28778

Levon Lindsey
Mary L Lindsey
400 S Oconeechee Avenue
Black Mountain, NC 28711

CERTIFICATE OF MAILING

This is to certify that the foregoing document (NOTICE OF VARIANCE FOR 400 S CHEROKEE AVENUE) has been duly served by depositing a copy of the same in the United States Mail, first-class, postage pre-paid, to the following:

Virginia Carr Alexander
402 Hickory Street
Black Mountain, NC 28711

Matthew B Howie
403 S Oconeechee Avenue
Black Mountain, NC 28711

Rhea W Bockhorst
Anna Marcel De Hermanas
404 S Oconeechee Avenue
Black Mountain, NC 28711

Patrick Forrest Dorsey
Jessica Alexander Dorsey
406 S Oconeechee Avenue
Black Mountain, NC 28711

George L Foose
Lisa O Foose
384 Montevista Avenue
Marion, NC 28752

Jerry M Cannon
Susan G Cannon
128 Woodside Avenue
Narberth, PA 19072

Jonathan E Douglas
Tiffany A Douglas
401 S Oconeechee Avenue
Black Mountain, NC 28711

Toby D Ives
Sarah Broughton-Ives
313 S Oconeechee Avenue
Black Mountain, NC 28711

Jennifer Tipton, CZO
Zoning Administrator

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: _____.

Date: _____

Notary Signature: _____

Notary Printed Name: _____

(Official Seal)

My Commission Expires: _____



LEGAL NOTICE

BLACK MOUNTAIN ZONING BOARD OF ADJUSTMENT

EVIDENTIARY HEARING

Thursday, June 18, 2020 at 6:00 p.m.

The Black Mountain Zoning Board of Adjustment will meet on **Thursday, June 18, 2020 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 400 S Cherokee Avenue, further identified as PIN #0619-07-2017.00000, to reduce the west side setback from 10' to 9'3".

The meeting is open to the public, however, social distancing measures will be in place and no more than ten (10) people will be allowed in the room at one time.

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 06/01/2020
Published in the Black Mountain News 06/04/2020 and 06/11/2020*

www.townofblackmountain.org

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

Case No: V-20-01

Case Name: 714 Rhododendron Ave

Hearing Date: June 18, 2020

Procedure: Zoning Board of Adjustment

Address of Variance Request:

714 Rhododendron Avenue
Black Mountain, NC 28711
PIN #0618-45-8043.00000

Applicant:

Scott MacKenzie & Deanna Kreisel
400 Thomas Street
Oxford, MS 38655

Request:

The applicant is seeking a variance to allow a deck and hot tub to extend into the ten foot (10') side setback by seven and a half feet (7.5').

City Staff:

Jennifer Tipton, Zoning Administrator

Contents of the Report:

Report Detail

Exhibit 1 – Variance Application (7 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 – Certificate of Mailing

Exhibit 7 – Aerial Map

Exhibit 8 – Picture of Posting of Property

Exhibit 9 – Staff Report

Exhibit 10 – Legal Notice

Exhibit 11 – Section 4.3.3 (K)(3)

Exhibit 12 – Section 2.1.4

I. SUMMARY OF REQUEST

The applicant is requesting to reduce the south side setback from ten feet (10') to two and a half feet (2.5') to accommodate a deck and hot tub.

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 UR-8 (urban residential) and required setbacks are as follows:

4.6.4.3 Dimensional requirements (UR-8).

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.)
Major Subdivisions	1/8 acre (5,446 sf) 8 DUA	15 ft	None	20 (15 steep hillside)	10	15	35
All Other Residential	5,000 sf	15 ft	None	20 (15 steep hillside)	10	15	35

The surrounding properties are zoned and developed for residential use.

	North	South	East	West
Adjacent Zoning Designation	UR-8	UR-8	UR-8	UR-8
Adjacent Land Uses	Residential (single-family)	Residential (single-family)	Residential (single-family)	Residential (single-family)

Existing Conditions

The subject property is a .14 acre parcel in the UR-8 zoning district. The average slope of the lot is 16.37%. A new single family residence was constructed on the site and granted a Certificate of Occupancy in January of 2020. The new construction met all setbacks at the issuance of the Certificate of Occupancy.

IV. NOTIFICATION

Notice of the variance request and hearing was mailed to 25 property owners within 200 feet of the project site. Public notice was posted on the Town bulletin board on June 1, 2020 and on the

Town of Black Mountain website on June 1, 2020. Legal notice appeared in the Black Mountain News the weeks of June 4, 2020 and June 11, 2020. The property was posted with a notice listing the time and date of the hearing.

V. ANALYSIS

The applicant purchased the home in February of 2020. The owners have added a twenty foot (20') by twenty foot (20') deck and hot tub on the front and side of the house. A deck is a permitted use and is a similar land use of neighboring properties.

Per Section 4.3.3 (K)(3), decks may encroach into the required side setback but can be no closer than six feet to the side property line. This would allow a deck to encroach a maximum of four feet (4') into the side property line. The deck currently encroaches seven and a half feet (7.5) into the side property line. With the encroachment allowance, the actual amount of variance being requested would be three feet (3').

The owners consulted with a contractor who informed them that a permit was not needed to add a deck and hot tub addition. Neither the contractor nor the homeowner called the Planning Department to check on setback or permit requirements.

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

The homeowner states that the property is narrow and has a limited yard area with the north side of lot being a steep up-slope and the west side sloping down immediately beyond the existing deck.

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 decks are a permitted use by right in the UR-8 district and the deck conforms to all other setback requirements for front and rear yard. A permit has been applied for and the deck and hot tub will need to be inspected by the Building Inspector to ensure conformance to all applicable building codes.

VARIANCE APPLICATION www.townofblackmountain.org

PROPERTY OWNER INFORMATION

Owner Name Scott MacKenzie and Deanna Kreisel		
Owner Address (Number, Street, City, State, ZIP) 400 Thomas St, Oxford, MS 38655		
Home Phone 662-607-9777	Cell Phone	Email Address smackenzbc@yahoo.com

APPLICATION FOR VARIANCE

I request a variance/variances from the following provisions of the ordinance:

Section Number(s): 4.6.4 Section Title(s): Urban Residential District
Dimensional
Subsection letter(s) and/or number(s): 4.6.4.3 Subsection Title(s): 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*):

Intallation of hot tub in extended deck at level of existing deck with access from ground floor
of house.

PROPERTY INFORMATION

Parcel Number 0619-19-5142	Current Zoning UR-8	Acreage .13
Address 714 Rhododendron Avenue, Black Mountain, NC 28711		
Average Slope % 16.37	Use of Property Second home	

CERTIFICATION

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

 Petitioner Signature	April 13, 2020 Date
---	------------------------

OFFICE USE ONLY

Date Received:	Fee: \$350.00 Cash: ☐ Check: ☐ # _____ Credit: ☐
Case Number:	Meeting Date:

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

VARIANCE BURDEN OF PROOF

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

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

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

Situation of house, size, shape, and topography of lot dictate that deck extension and hot tub installation cannot be accomplished on any part of lot without encroaching at least 7.5 feet on some part of 10-foot side setback.

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.

Property has very narrow and limited yard area (see survey/plan) that is suitable for deck and hot tub. North side is steep up-slope, west side slopes down immediately beyond existing deck (see photo 1). Deck plan for south side is as narrow as can reasonably accommodate hot tub, especially since crawl space access is at west corner of south side of house (see photo 2).

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.

Planning for deck was completed in discussion with contractor (All Star Fence) who stated that no permit would be required and no obstacles existed to construction as planned (see email).

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.

Deck faces open lot (backyard of 712 Rhododendron Avenue) and is not in any proximity to house at 712 (see survey 2). Deck does not disrupt any potential uses of adjacent lot. Underside of deck will be concealed by trellis and decorative plantings. Access is unimpeded to rear of 714 lot, which is not suitable for use. In the absence of a deck, the outside space of 714 is not available for owner enjoyment — grassed area is narrow, sloping, and subject to dampness because of drainage from lots above 714.

N 03°05'

OH

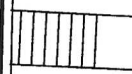
N 03°05'00"E

38.02'

S 87°54'43"E

50.12'

CONCRETE



GRAVEL DRIVE

FOUND 5/8" IRON ROD
W/ CAP (DISTURBED)
RESET

LOT 21

LOT "A"
5,752 SQUARE FEET
0.13 ACRES

S 87°32'37"E

130.00'

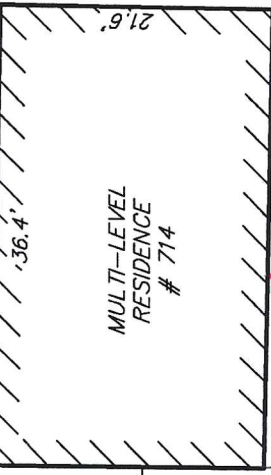
OVERHANG
BLOCK GARAGE

SE
IN
PO

BLOCK WALL

WOOD PORCH

MULTI-LEVEL
RESIDENCE
714



50.00'

S 03°17'20"W

150.00'

61.98'

OH

N 58°01'23"W

24.96'

25'
FENCE
25'

18'

20'

10.5'

S 87°32'37"E

57.85'

N/F
FARMBOUND HOLDINGS, LLC
DEED BOOK 5537, PAGE 684
PIN 0619-19-5007

ALVIS L
PAT
DEED B
DEED B
DEED B
PI

PLAT BOOK 27

Photo 1



Photo 2



Crawl space

Re: All Star Fence, Inc

From: Scott MacKenzie (smackenzbc@yahoo.com)

To: smackenzbc@yahoo.com

Date: Friday, April 10, 2020, 12:14 PM CDT

From: Cody Grindstaff <allstarfencenc@gmail.com>

To: Scott MacKenzie <smackenzbc@yahoo.com>

Sent: Friday, April 3, 2020, 04:50:57 PM CDT

Subject: Re: All Star Fence, Inc

Mr. MacKenzie,

We should be excluded from needing a permit due to size of the project. They set limits for size and cost of project. However, if overlooked we can straighten that out. As far as a drawing or site plan we can draw the layout based on the original drawing you sent us.

Sent from my iPhone

On Apr 3, 2020, at 5:37 PM, Scott MacKenzie <smackenzbc@yahoo.com> wrote:

Hi Cody,

I just got a letter from the Town of Black Mountain asking us to pull a permit for the deck and hot tub. Of course that's not what we were hoping to hear and we are pretty concerned about the town's setback requirement, which is 10 feet, subject to variance. We don't want to receive a violation, so we would like to try to work this out as soon as we can. I will fill out the permit application, but I'm going to need to provide a site plan. Are you able to come up with something like that for us?

Hope you're well
Scott

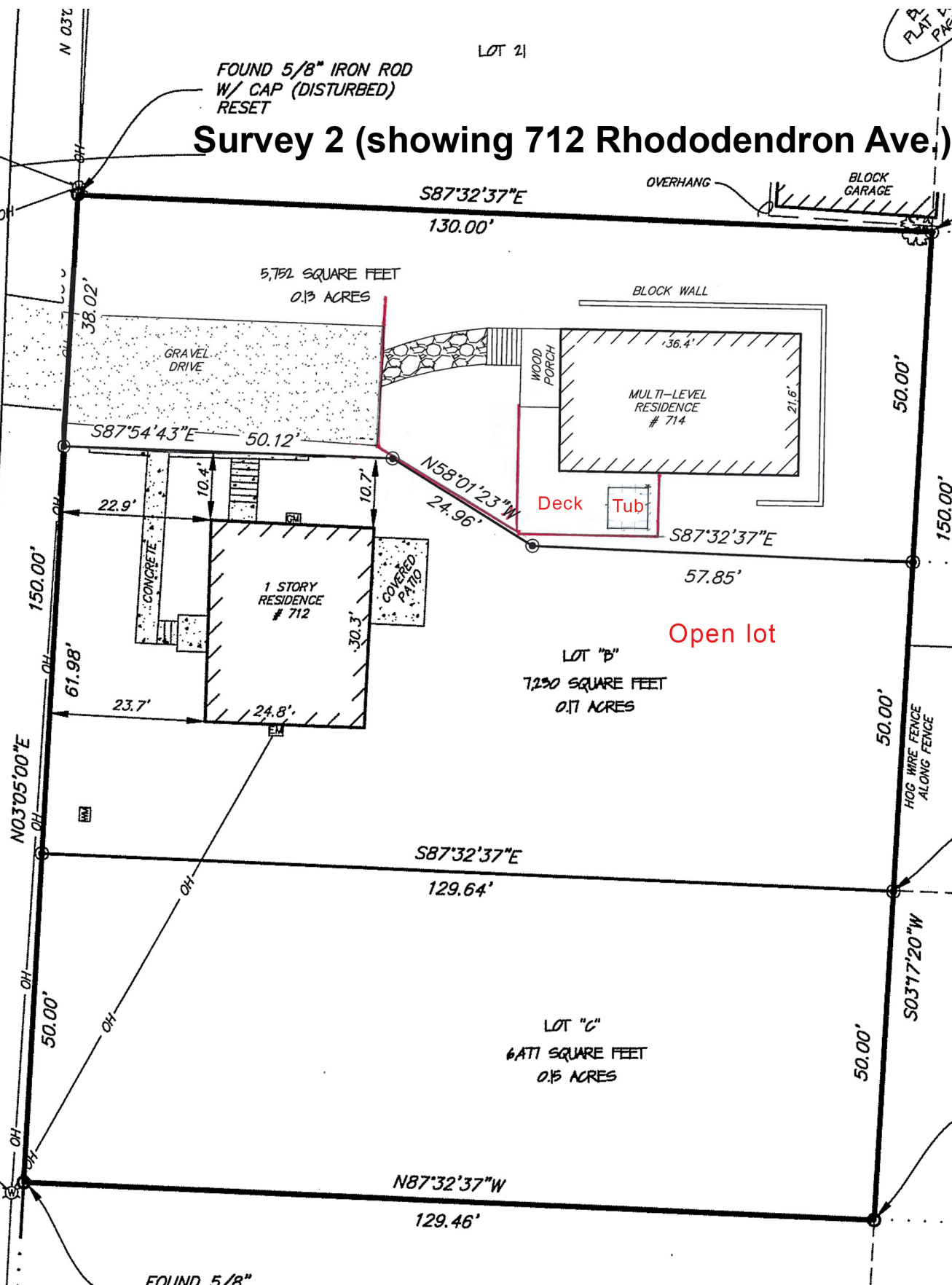
PLAN PAGE

LOT 21

FOUND 5/8" IRON ROD
W/ CAP (DISTURBED)
RESET

Survey 2 (showing 712 Rhododendron Ave.)

RHODODENDRON AVENUE
18' ASPHALT PAVEMENT



FOUND 5/8"

CHARLES P. LEA
DEED PIN

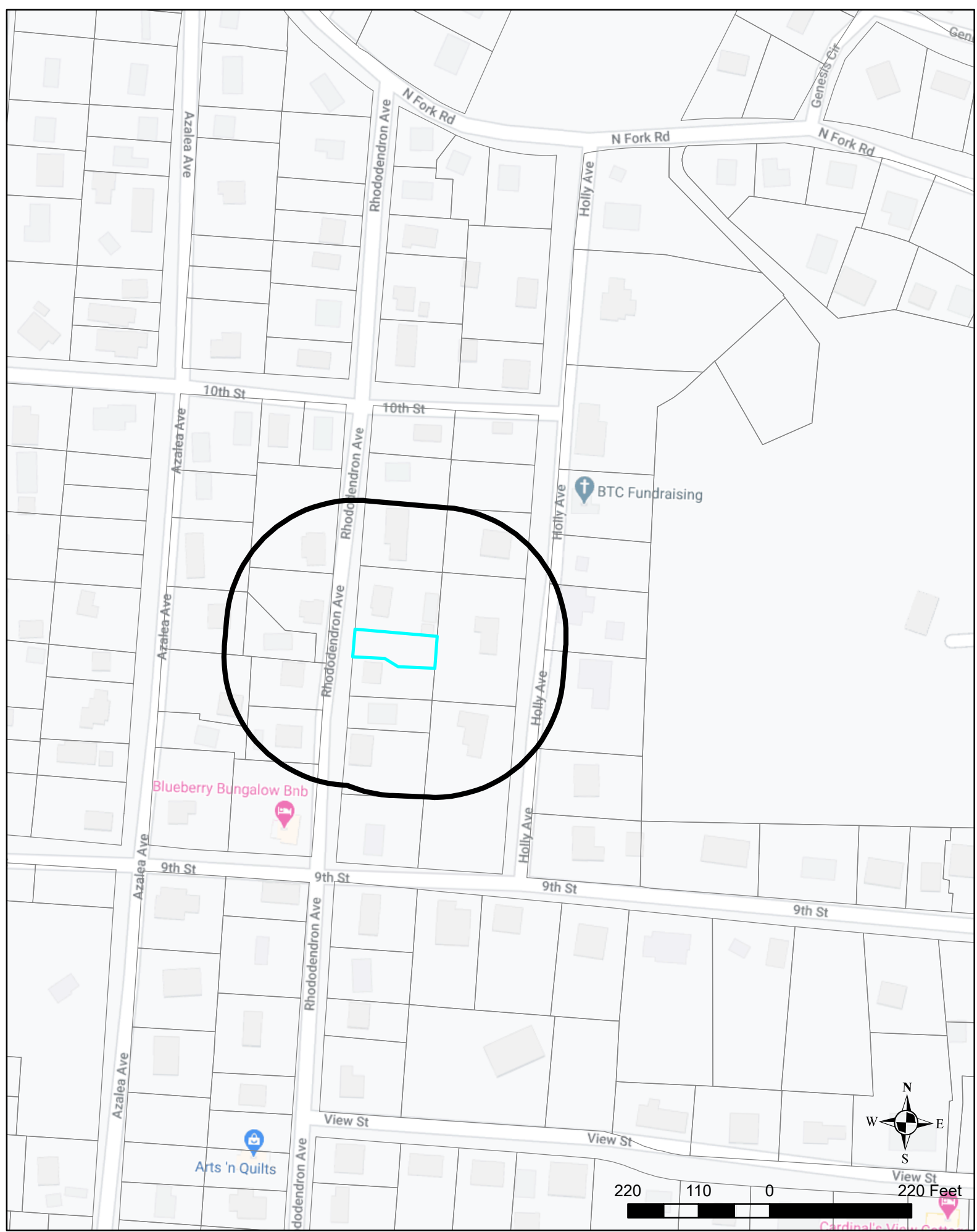
RECEIPT

Date: 5/27/2020 Amount Paid: 350
Customer: Scott Mackenzie
For: variance application - 714 Rhododendron
Balance: Ø
CC W. Syntin
Received by:



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

714 Rhododendron Avenue 200' Buffer



<u>Name</u>	<u>Address</u>	<u>City</u>	<u>State</u>	<u>Zip</u>	<u>PIN #</u>
Deanna Kreisel & Scott MacKenzie	400 Thomas St	Oxford	MS	38655	0619-19-5412
Farmbound Holdings LLC	PO Box 5474	Asheville	NC	28813	0619-19-5027
Rebecca E Askew & Helen Cornelia Summerlin	710 Rhododendron Ave	Black Mountain	NC	28711	0619-19-5022
James Michael Baldwin & Martha J Baldwin	PO Box 415	Black Mountain	NC	28711	0619-18-5924
Alan F Huskins	702 Rhododendron Ave	Black Mountain	NC	28711	0619-18-5814
Jean E Stafford	703 Holly Avenue	Black Mountain	NC	28711	0619-18-6940
Heath K Rada & Peggy F Rada	219 Valley Ridge Ln	Black Mountain	NC	28711	0619-18-8931
Mary E Cockrell	706 Holly Ave	Black Mountain	NC	28711	0619-19-8043
Kent W Patton Et Al	708 Holly Ave	Black Mountain	NC	28711	0619-19-8156
Darrell E Johnson & Gayle Lynn Petty Revocable Trust	122 Fairway Dr	Black Mountain	NC	28711	0619-19-8255
Shannon Kay Cooper & Benjamin J Cooper	PO Box 5472	Charlotte	NC	28299	0619-19-6387
Bruce S Cotton Jr	709 Holly Ave	Black Mountain	NC	28711	0619-19-6288
Patricia M Osteen, Vickie Osteen, Edward Keith Osteen; Jed Douglas Osteen	705 Holly Ave	Black Mountain	NC	28711	0619-19-6163
Stirco LLC	104 Parkway Vista Dr	Asheville	NC	28805	0619-19-5149
Carol Lynn Marett	718 Rhododendron Ave	Black Mountain	NC	28711	0619-19-5259
Eric Charles Nystrom & Melinda Mia Nystrom	7626 La Bosla Dr	Dallas	TX	75248	0619-19-5358
Donald B Stikeleather & Diane B Ouellette	719 Rhododendron Ave	Black Mountain	NC	28711	0619-19-3382
Robin Alan Glenn & Meredith K Glenn	16 Carolina Hts	Black Mountain	NC	28711	0619-19-3179
Alejo Rottenberg	713 Rhododendron Ave	Black Mountain	NC	28711	0619-19-3153
Lynn C Mitchell	711 Rhododendron Ave	Black Mountain	NC	28711	0619-19-3077
Kara Kimberly Glenn	707 Rhododendron Ave	Black Mountain	NC	28711	0619-18-3969
Blueberry Bungalow LLC	513 Tomahawk Ave	Black Mountain	NC	28711	0619-18-3847
Grayson B Deal & Margaret Clayton	706 Azalea Ave	Black Mountain	NC	28711	0619-18-2939
Grayson B Deal	706 Azalea Ave	Black Mountain	NC	28711	0619-19-2046
Janet E Blanchard & Charles H Brown Jr	304 Allen Mountain Dr	Black Mountain	NC	28711	0619-19-2146
Mary C Parton & Jim H Parton	714 Azalea Ave	Black Mountain	NC	28711	0619-19-2557

[illegible]



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: **June 1, 2020**

TO: Property Owner

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

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

**Scott MacKenzie and Deanna Kreisel
714 Rhododendron Avenue**

Property Description/PIN #: **0619-19-5142.00000**

Current Zoning Classification: **UR-8 (urban residential)**

This property is currently used for the purpose of: **single family residence**

The variance is requested to allow the property owner to:

Reduce the side setback from ten feet (10') to two and a half feet (2.5') to accommodate a deck and hot tub.

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

The property has a narrow and limited yard area and the west side is the only side to reasonably accommodate a deck and hot tub.

A public hearing will be held on Thursday, June 18, 2020 @ 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 714 RHODODENDRON AVENUE) has been duly served by depositing a copy of the same in the United States Mail, first-class, postage pre-paid, to the following:

Deanna Kreisel
Scott MacKenzie
400 Thomas Street
Oxford, MS 38655

Farmbound Holdings LLC
Attn: Christopher S Eller
PO Box 5474
Asheville, NC 28813

Rebecca E Askew
Helen Cornelia Summerlin
710 Rhododendron Avenue
Black Mountain, NC 28711

James Michael Baldwin
Martha J Baldwin
PO Box 415
Black Mountain, NC 28711

Alan F Huskins
702 Rhododendron Avenue
Black Mountain, NC 28711

Jean E Stafford
703 Holly Avenue
Black Mountain, NC 28711

Heath K Rada & Peggy F Rada
219 Valley Ridge Ln
Black Mountain, NC 28711

Mary E Cockrell
705 Holly Avenue
Black Mountain, NC 28711

Kent W Patton Et Al
708 Holly Avenue
Black Mountain, NC 28711

Darrell E Johnson & Gayle Lynn
Petty Revocable Trust
122 Fairway Drive
Black Mountain, NC 28711

Shannon Kay Cooper
Benjamin J Cooper
PO Box 5472
Charlotte, NC 28299

Bruce S Cotton Jr
709 Holly Avenue
Black Mountain, NC 28711

Patricia M Osteen
Vickie Osteen
Edward Keith Osteen
Jed Douglas Osteen
705 Holly Avenue
Black Mountain, NC 28711

Stirlco LLC
104 Parkway Vista Dr
Asheville, NC 28805

Carol Lynn Marett
718 Rhododendron Avenue
Black Mountain, NC 28711

Alejo Rottenberg
713 Rhododendron Avenue
Black Mountain, NC 28711

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Eric Charles Nystrom
Melinda Mia Nystrom
76726 La Bosla Drive
Dallas, TX 75248

Donald B Stikeleather
Diane B Ouellette
719 Rhododendron Avenue
Black Mountain, NC 28711

Robin Alan Glenn
Meredith K Glenn
16 Carolina Hts
Black Mountain, NC 28711

Lynn C Mitchell
711 Rhododendron Avenue
Black Mountain, NC 28711

Kara Kimberly Glenn
707 Rhododendron Avenue
Black Mountain, NC 28711

Blueberry Bungalow LLC
513 Tomahawk Avenue
Black Mountain, NC 28711

Grayson B Deal
Margaret Clayton
706 Azalea Avenue
Black Mountain, NC 28711

Janet E Blanchard
Charles H Brown Jr
304 Allen Mountain Drive
Black Mountain, NC 28711

Mary C Parton & Jim H Parton
714 Azalea Avenue
Black Mountain, NC 28711

Jennifer Tipton, CZO
Zoning Administrator

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: _____.

Date: _____

Notary Signature: _____

Notary Printed Name: _____
My Commission Expires: _____

(Official Seal)

This is an aerial map of a residential neighborhood. The map displays property boundaries in red lines and various lot numbers. A specific property is highlighted with a red outline. The map includes the following details:

- Streets:** RICHMOND AVE (vertical on the left), HOLLY AVE (vertical on the right).
- Highlighted Property:** A lot with address 5142, located between Richmond Ave and Holly Ave, and between lots 5149 and 5027.
- Other Addresses and Lot Numbers:**
 - Top left: 2257, 3382, 2146, 3179, 3153.
 - Middle left: 2046, 2939, 3969, 2829, 3847.
 - Top center: 5259, 6288, 5149, 6163.
 - Center: 5027, 5022, 5924, 6940.
 - Bottom center: 5814.
 - Top right: 8255, 8156, 8043, 4213.
 - Bottom right: 8931, 8831, 0810.
- Other Features:** The map shows various trees, houses, and a car on the highlighted property. Lot numbers are scattered throughout the map, indicating the size of the parcels.

1:1,128

0 0.0075 0.015 0.03 mi

0 0.015 0.03 0.06 km



LEGAL NOTICE

BLACK MOUNTAIN ZONING BOARD OF ADJUSTMENT

EVIDENTIARY HEARING

Thursday, June 18, 2020 at 6:00 p.m.

The Black Mountain Zoning Board of Adjustment will meet on **Thursday, June 18, 2020 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 714 Rhododendron Avenue, further identified as PIN #0619-19-5142.00000, to south side setback from 10' to 2.5'.

The meeting is open to the public, however, social distancing measures will be in place and no more than ten (10) people will be allowed in the room at one time.

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 06/01/2020
Published in the Black Mountain News 06/04/2020 and 06/11/2020

www.townofblackmountain.org