



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, Clerk to ZBA
Re: Agenda Packet for August 20, 2020
Date: August 14, 2020

The **Town of Black Mountain Zoning Board of Adjustment** will meet on **Thursday, August 20, 2020 at 6:00 p.m.** virtually via Zoom.

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

1. The proposed agenda;
2. Draft minutes from June 18, 2020;
3. Variance Request for 714 Rhododendron Avenue;
4. Introduction of Jake Hair, Planner; and
5. Election of Officers.

Please let Jennifer Tipton know if you are **unable** to attend this meeting.
jennifer.tipton@townofblackmountain.org or (828) 419-9371.

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) 419-9371 or by email at jennifer.tipton@townofblackmountain.org.

CC: Jessica Trotman, Planning Director
Ron Sneed, Town Attorney
Jake Hair, Planner



PUBLIC NOTICE

BLACK MOUNTAIN ZONING BOARD OF ADJUSTMENT

In order to maintain the safety of Town residents, staff, and the Zoning Board of Adjustment, the Zoning Board of Adjustment regular meeting scheduled for **Thursday, August 20, 2020 at 6:00 p.m. will be conducted electronically using Zoom software** in lieu of its in-person meeting. The Town of Black Mountain Town Hall will not be open for this meeting.

There are two ways the public can participate in the meeting:

1. **Join the meeting through Zoom on your computer or smart device.** **Citizen video feeds will not be enabled. There is no password.*

<https://us02web.zoom.us/j/86214878586>

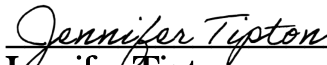
Meeting ID: 862 1487 8586

If you have not used Zoom before on a computer or smart device, you are encouraged to download the application from their website at [Zoom.us/download](https://zoom.us/download) and try it out prior to the meeting. There is no cost associated with the software or attending the meeting and there are toll free number options to dial in to listen live only.

2. **Join the meeting by telephone (listen only).**

Simply call US Toll-free 1-877-853-5247 or US Toll-free 1-888-788-0099

Meeting ID: 862 1487 8586 followed by the Pound sign (#)


Jennifer Tipton
Clerk to ZBA

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Posted to the Town Bulletin Board 07/29/2020
www.townofblackmountain.org



**Zoning Board of Adjustment Regular Meeting
August 20, 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 of June 18, 2020 as written [or as amended]

IV. OLD BUSINESS

V. NEW BUSINESS

- Variance Request for 714 Rhododendron Avenue
- Introduction of Jake Hair, Planner
- Election of Officers

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, June 18, 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
Janet McKimpson, Alternate
Greg Feightner, Alternate

Absent:

Bob Osmundsen

Staff:

Jennifer Tipton, Zoning Administrator
William Morgan, Attorney for Board of Adjustment

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) alternates.

II. ADOPTION OF AGENDA

Jennifer Tipton made one change to the agenda. The variance for 714 Rhododendron Avenue is being postponed while the applicant seeks legal counsel. John DeWitt made a motion to adopt the agenda as amended. The motion was seconded by Janet McKimpson and approved by a vote of 5-0.

III. ADOPTION OF MINUTES

John DeWitt made a motion to adopt the minutes of January 16, 2020 as written. The motion was seconded by Janet McKimpson and approved by a vote of 5-0.

IV. OLD BUSINESS

None.

V. NEW BUSINESS

1. Appeal of Zoning Administrator's Decision

Ms. Tipton explained that in late February or early March, Jeff Hall asked about renting out one of his bays to someone to work on heavy equipment. The property is currently zoned TR-4 and is grandfathered in for work on automobiles. The Town has an automotive sales, service and repair use and a heavy equipment service and repair use. The Town only defines automotive sales, service and repair. The Town denied Mr. Hall's request has his use is automotive sales, service and repair and not heavy equipment service and repair.

Ms. Tipton presented the following evidence:

Exhibit 1: Appeal Record

Exhibit 2: Buffer Map of Property Owners with 200'

Exhibit 3: List of Property Owners within 200'

Zoning Board of Adjustment Regular Meeting
June 18, 2020

Exhibit 4: Notice of Appeal

Exhibit 5: Certificate of Mailing

Exhibit 6: Aerial Map

Exhibit 7: Property Posting

Jeff Hall, 410 Blue Ridge Road, said that he was wanting to rent a space to someone to work on heavy equipment. Mr. Hall said that he works on cars, trucks, and automobiles. He was given a variance at some point to add on to the garage and put in a taller bay to work on heavy equipment. Mr. Hall said the business has been operating since around 1960 when his dad was the owner and that he did not remember when he was annexed into the town. Mr. Hall said that the sometimes works on heavy machinery weekly and sometimes once or twice a month but has not ceased his operation.

Michael Raines, 554 Blue Ridge Road, said that the thought the property was annexed into the town in 1970 or 1981. Mr. Raines said that he has helped Mr. Hall with his operation for the last thirty years and at one point Mr. Hall had thirty trucks. Mr. Raines said that Mr. Hall's towing operation is the only one like it in this part of the county and they have unloaded cargo and wrecked vehicles among other things.

Don Collins, 80 Camp Branch Road, said that he owns property next to Mr. Hall. Mr. Collins said that he pursued a lawsuit against the town to not annex his property and that was in the 1980's. Mr. Collins said that he sees Mr. Hall working on heavy equipment one to two times a month. Mr. Collins said that Mr. Hall is grandfathered in and is not asking to do more than what he has been doing.

Wayne Drummond, 63 Highland Drive, said that he owns 408 Blue Ridge Road and has not had any complaints from his tenants regarding the operation at Mr. Hall's. Mr. Drummond said that the existing operation does not alter or change his property value and was in existence when he purchased the property.

John Clements, 561 Blue Ridge Road, said the he also owns an auto repair business and has no objections to Mr. Hall is already doing. Mr. Clements said that Mr. Hall has a large facility to accommodate heavy equipment service and has a fenced yard to keep the vehicles in. Mr. Clements said Mr. Hall is someone he would loan tools too.

Lisa Milton, 406 W State Street, said that she owns neighboring property and the river runs between the properties. Ms. Milton said that Mr. Hall has been a good steward of the property and that he practices all of the state laws that are required for the vehicles and that he keeps the property maintained. Ms. Milton said that she and her husband built a house for her mother-in-law in 1985 or 1986 and that Mr. Hall helped with equipment. Ms. Milton also stated that she has a 1958 flexible bus and that Mr. Hall hauled and stored the bus until gates were placed on her property. Ms. Milton said for at least the last thirty years, she has seen Mr. Hall work on heavy equipment. Ms. Milton said that Mr. Hall is conscientious of the neighborhood and the only vehicles out front are the ones that have been dropped off for services. Ms. Milton said that she felt this was discriminatory against a man who has followed all of the rules.

Larry Ogle, 407 Blue Ridge Road, said that he is in support of Mr. Hall and that Mr. Hall is a great neighbor and has worked on heavy equipment his whole life.

The board deliberated and said that there needs to be a definition of heavy use and that the existing definitions don't fit his operation. Chair Milton said that being grandfathered supersedes the definitions and he hasn't ceased operations for longer than six months. Chair Milton also said that the witnesses have testified that they have seen him work on heavy equipment and that the neighbors don't have a problem with the operation.

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June 18, 2020

Greg Feightner made a motion to overturn the decision of the Zoning Administrator to allow Mr. Hall to operate heavy equipment service and repair at 410 Blue Ridge Road. The motion was seconded by John DeWitt and approved by a vote of 5-0.

2. Variance Request for 400 S Cherokee Avenue

Ms. Tipton went over the staff report for the request to reduce the side setback of ten feet to nine and half feet to be able to subdivide the property. The property is UR-8 and requires a ten foot side setback. The houses were built in 1953, prior to any zoning regulations, and the houses were built at a slight angle causing the setback issue. All other setbacks and lot sizes are conforming to the UR-8 district requirements.

Michelle Trimble, 4 Cisco Road, read an amendment to the variance request. The amendment stated that the owner is currently in the process of rehabbing the house and that the setback from the house facing S Cherokee is fifteen feet, making the total setbacks between the houses be twenty-five feet and not twenty feet.

Ms. Tipton presented the following evidence:

Exhibit 1: Staff Report

Exhibit 2: Application for Variance

Exhibit 3: Receipt of Payment

Exhibit 4: Buffer Map

Exhibit 5: List of Property Owners

Exhibit 6: Notice of Variance Request

Exhibit 7: Certificate of Mailing

Exhibit 8: 2019 Aerial Map

Exhibit 9: Picture of Property Posting

The board made the following findings of fact:

1. There are unnecessary hardships would result from the strict application of the Ordinance in that the houses were constructed in 1953 prior to enactment of the Land Use Code and the setback and subdivision requirements did not exist.
2. The hardship results from conditions that are peculiar to the property because the homes were constructed in 1953 prior to the enactment of the Land Use Code, setback requirements and subdivision regulations.
3. The hardship did not result from actions taken by the applicant because the houses were constructed in 1953 prior to the Land Use Code and setback and subdivision requirements were established.
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 because both of the houses have existed since 1953 in the current locations and configurations; however, the variance allows the property to be subdivided such that they can each be owned separately. The resulting lots (6,239 and 9,430 square feet respectively) exceed the 5,000 square foot minimum lot size requirement in the UR-8 zoning district, have access to streets, and will be accessible by fire and emergency vehicles.

John DeWitt made a motion to grant the variance to allow a reduction of the side setback from ten feet to nine and a half feet.

VI. COMMUNICATION FROM ZBA

None.

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June 18, 2020

VII. COMMUNICATION FROM STAFF

None.

VIII. ADJOURNMENT

John DeWitt made a motion to adjourn at 6:48 p.m. The motion was seconded by Greg Feightner and approved by a vote of 5-0.

Prepared by:

Cheryl Milton, Chair

Jennifer Tipton, Zoning Administrator

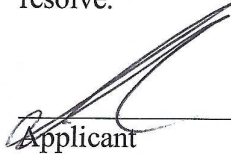
Applicant Consent and Acknowledgement for Holding a Virtual Quasi-Judicial Hearing

RE: Variance Request for 714 Rhododendron Avenue

I, SCOTT MACKENZIE, applicant for the requested variance at 714 Rhododendron Avenue, acknowledge and consent to a virtual format, via Zoom, for the project's required quasi-judicial hearing before the Town of Black Mountain Zoning Board of Adjustment. I understand that I have the burden of proof, and that remote meetings can be disadvantageous.

I acknowledge that intangible factors like veracity and rapport are difficult to establish or show via videoconference, and that it can be different to explain a map or other exhibit on video. I further acknowledge that technical glitches may occur, which may interfere with the presentation of may evidence.

Furthermore, I understand that holding quasi-judicial hearings remotely is legally questionable. Court challenges, if any, to the remote nature of this hearing could take months or even years to resolve.


Applicant

August 6, 2020

Date

Please return no later than August 17, 2010 to:

Jennifer Tipton
160 Midland Avenue
Black Mountain, NC 28711

or

jennifer.tipton@townofblackmountain.org

or

Fax to: 828-669-2030

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

Case No: V-20-01

Case Name: 714 Rhododendron Ave

Hearing Date: August 20, 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:

Jake Hair, Planner
Jennifer Tipton, Clerk to ZBA

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 July 29, 2020 and on the

Town of Black Mountain website on July 29, 2020. Legal notice appeared in the Black Mountain News the weeks of August 6, 2020 and August 13, 2020. The property was posted with a notice listing the time and date of the hearing. Consent forms were sent to the applicant and all property owners within 200 feet to consent to having a virtual evidentiary hearing for the variance request.

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
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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'

38.02'

N 03°05'00"E

150.00'

61.98'

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

LOT 21

LOT "A"
5,752 SQUARE FEET
0.13 ACRES

GRAVEL
DRIVE

CONCRETE

S87°54'43"E 50.12'



25'

FENCE

25'

N58°01'23"W 24.96'

18'

20'

10.5'

S87°32'37"E

57.85'

50.00'

S03°17'20"W

BLOCK
GARAGE

OVERHANG

BLOCK WALL

MULTI-LEVEL
RESIDENCE
714

WOOD
PORCH

21.6'

36.4'

SE
IN
PO

ALVIS L
PAT
DEED B
DEED B
DEED B
PI

PLAT BOOK 27

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

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,

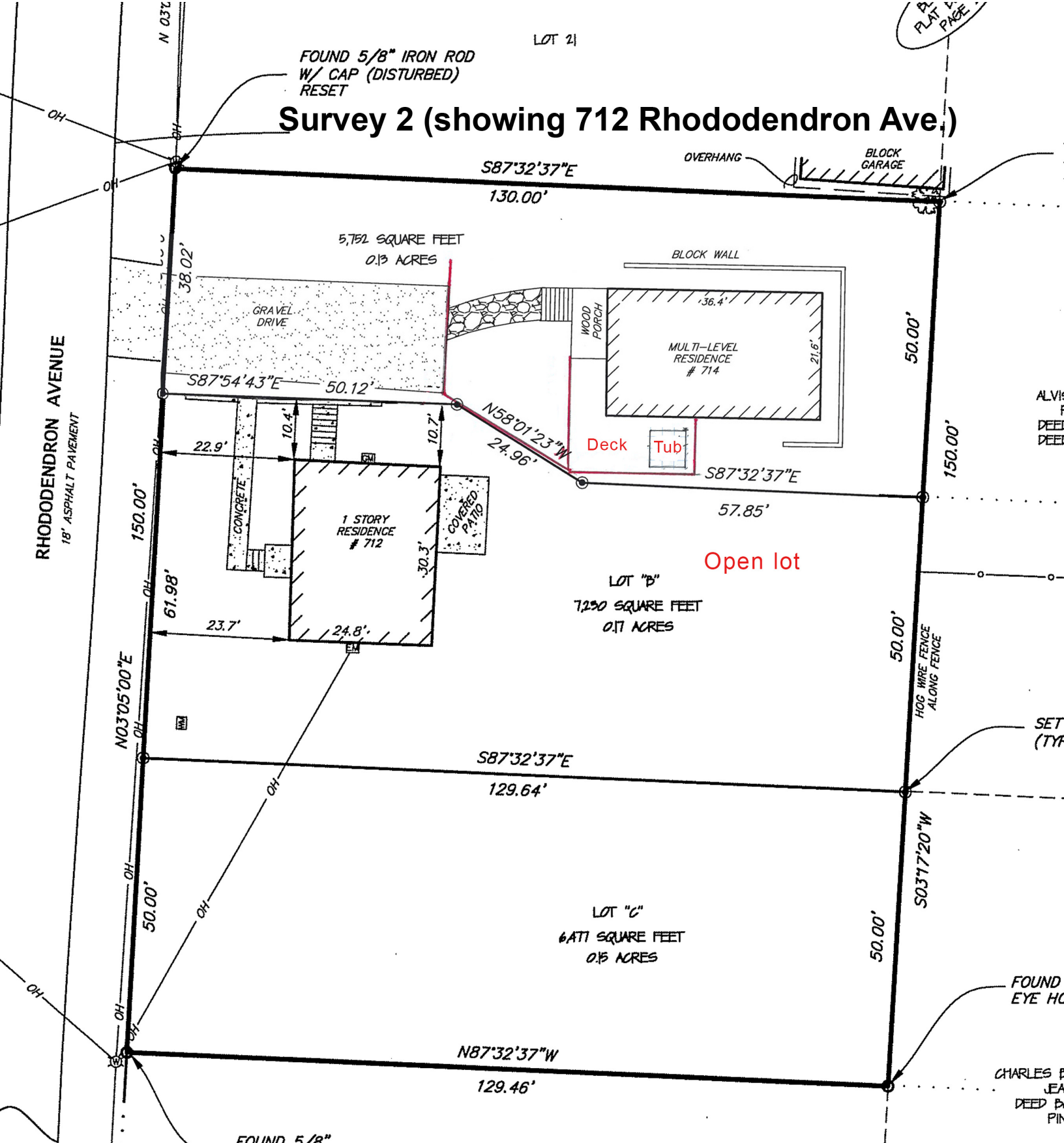
I just got a letter from the Town of Black Mountain asking us to pull a permit for the deck and hot tub. Of course that's not what we were hoping to hear and we are pretty concerned about the town's setback requirement, which is 10 feet, subject to variance. We don't want to receive a violation, so we 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

LOT 21

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

Survey 2 (showing 712 Rhododendron Ave.)







714

4.3.3 - Setbacks, corner lots and double frontage lots.

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

(Ord. No. O-11-01, § 5, 5-9-2011; [Ord. No. O-14-13](#), 10-13-2014; [Ord. No. O-15-05](#), § 3, 4-13-2015; [Ord. No. O-16-04](#), § 1, 3-14-2016)

2.1.4 - Town zoning authorization and building permit required.

- A. *Permit required before work is begun.* Failure to obtain a written permit prior to beginning of construction shall be a misdemeanor as provided in N.C.G.S. 160A-417(f) and constitute a violation of this article and subject the offender to a civil penalty of \$50.00 per day, with each day after the beginning of work being a separate violation. A stop order will be issued and remain in effect until the work done is removed or a permit is properly applied for and approved. Penalties may be waived in cases of emergency repairs or hardship as determined by the building inspector. Questions concerning whether or not specific work or jobs need a permit should be directed to the town building inspector's office.
- B. *Zoning, stormwater and fire safety authorization required.* No building permit will be issued until the town zoning administrator has provided his or her authorization that the proposed structure or use is compliant with the zoning district in which it is located. The town fire prevention inspector must provide his or her authorization that the project is compliant with the town fire district ordinance. The permit must also be reviewed and approved by the storm water and floodplain administrator.
- C. *Permits issued for approved developments and lots only.* The building permit shall not be issued for construction of infrastructure in a new subdivision until the preliminary plat is approved, and building permits for construction on new lots which are created by the subdivision of land shall not be issued until the subdivision plat is approved. Building permits for existing lots shall be issued if the
- D. *False statements.* False statements on any application for a permit shall be grounds for immediate revocation or denial of such license or permit.

([Ord. No. O-19-11](#), 6-10-2019)

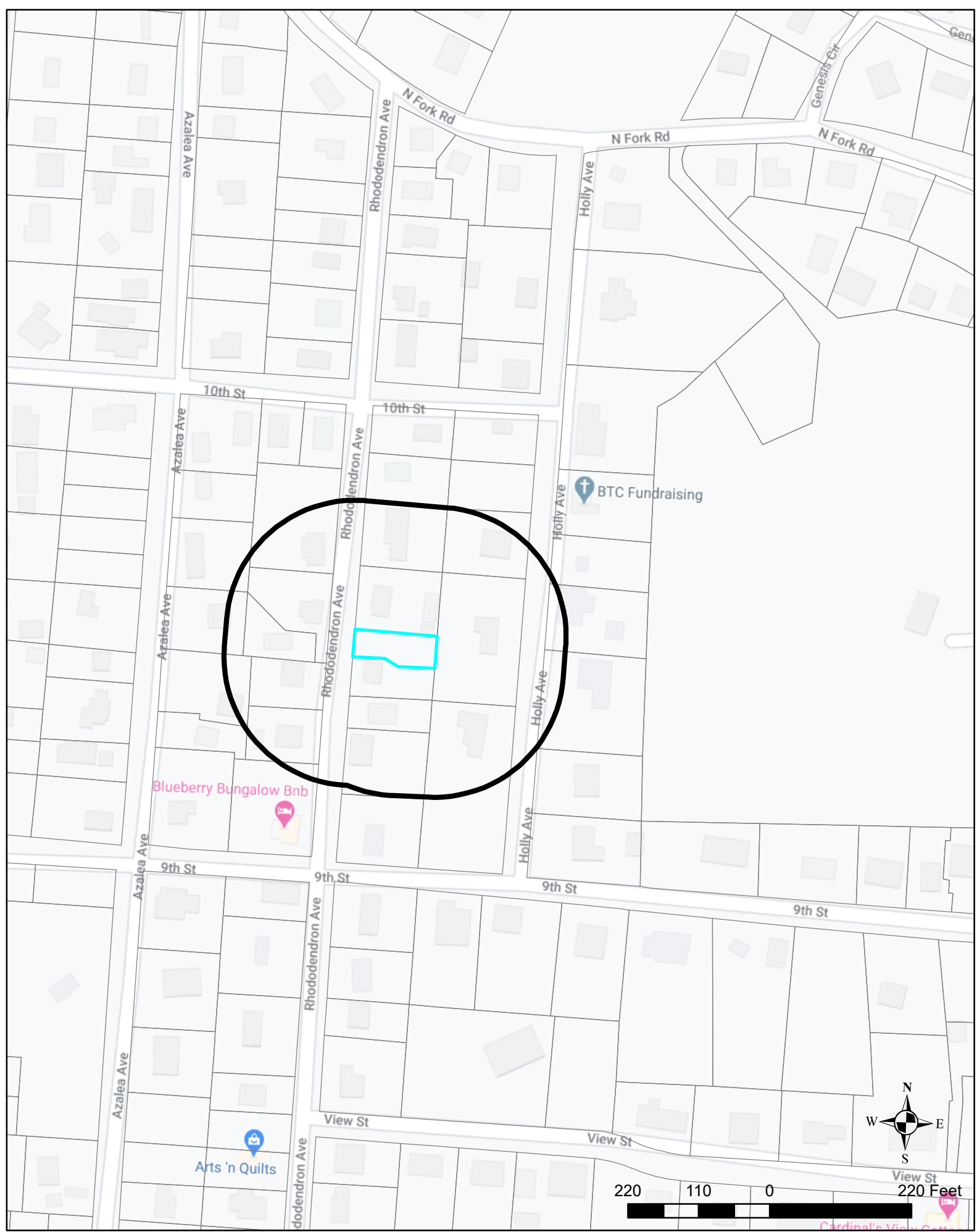
RECEIPT

Date: 5/27/2020 Amount Paid: 350
Customer: Scott Mackenzie
For: variance application - 714 Rhododendron
Balance: Ø
CC W. J. J. J. J. 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: **July 29, 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, August 20, 2020 @ 6:00 p.m. via Zoom. Details regarding the Zoom meeting are on the additional pages attached to this notice.

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

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:

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
Clerk to ZBA

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: _____.

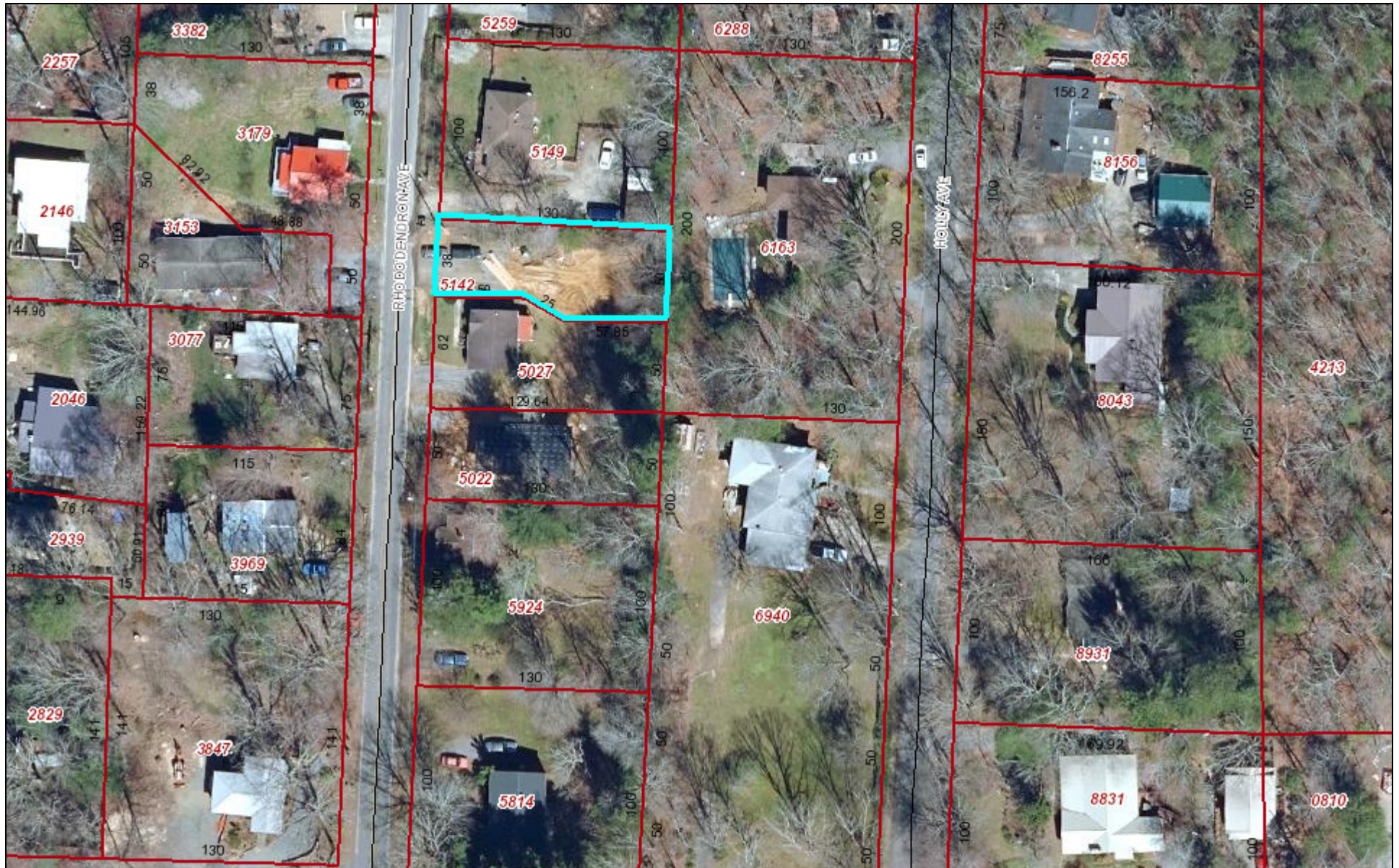
Date: _____

Notary Signature: _____

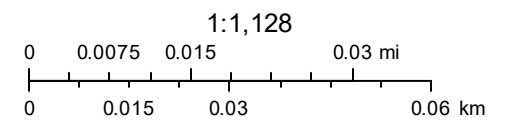
Notary Printed Name: _____
My Commission Expires: _____

(Official Seal)

714 Rhododendron Ave Aerial Map - 2019



May 27, 2020



EVIDENTIARY HEARING

August 20, 2020
6:00 p.m.

www.townofblackmountain.org
for Zoom meeting details

160 MIDLAND AVENUE
BLACK MOUNTAIN, NC 28711
FOR MORE INFORMATION CALL 419-9373



LEGAL NOTICE

BLACK MOUNTAIN ZONING BOARD OF ADJUSTMENT

EVIDENTIARY HEARING

In order to maintain the safety of Town residents, staff, and the Zoning Board of Adjustment, the Zoning Board of Adjustment regular meeting scheduled for **Thursday, August 20, 2020 at 6:00 p.m. will be conducted electronically using Zoom software** in lieu of its in-person meeting. The Town of Black Mountain Town Hall will not be open for this meeting.

There are two ways the public can participate in the meeting:

1. **Join the meeting through Zoom on your computer or smart device.** **Citizen video feeds will not be enabled. There is no password.*

<https://us02web.zoom.us/j/86214878586>

Meeting ID: 862 1487 8586

If you have not used Zoom before on a computer or smart device, you are encouraged to download the application from their website at [Zoom.us/download](https://zoom.us/download) and try it out prior to the meeting. There is no cost associated with the software or attending the meeting and there are toll free number options to dial in to listen live only.

2. **Join the meeting by telephone (listen only).**

Simply call US Toll-free 1-877-853-5247 or US Toll-free 1-888-788-0099

Meeting ID: 862 1487 8586 followed by the Pound sign (#)


Jennifer Tipton
Clerk to ZBA

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 at (828) 419-9371 or by email at Jennifer.tipton@townofblackmountain.org

*Posted to the Town Bulletin Board 07/29/2020
Published in the Black Mountain News 08/06/2020 and 08/13/2020
www.townofblackmountain.org*