

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

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

John DeWitt, Vice Chair
Ted Mattson
Bob Osmundsen
Janet McKimpson
Patrick Prosser, Alternate

Absent:

Cheryl Milton, Chair
Greg Feightner, Alternate
Jillian Ballard, Alternate

Staff:

Jennifer Tipton, Senior Admin
Ron Sneed, Town Attorney
Jake Hair, Planner

The meeting was called to order at 6:00 p.m. and duly constituted and opened for business with a quorum of four (4) regular members and one (1) alternate.

II. ADOPTION OF AGENDA

Jennifer Tipton made one change to the agenda to remove the election of officers since all members of the board were not present. Ted Mattson made a motion to adopt the agenda as amended. The motion was passed by consensus by a vote of 5-0.

III. ADOPTION OF MINUTES

Ted Mattson made a motion to adopt the minutes from June 18, 2020 as written. The motion was passed by consensus by a vote of 5-0.

IV. OLD BUSINESS

None.

V. NEW BUSINESS

1. Variance Request for 714 Rhododendron Avenue

Jennifer Tipton presented the staff summary. The variance request is to reduce the required ten foot side setback to two and a half feet to allow for a deck. The property is zoned UR-8 and decks are a permitted use. The Land Use Code does allow an encroachment for uncovered decks into the side yard but the deck can be no closer than six feet to the property line at that time. With that allowance, the actual variance request is a reduction of three and a half feet for the side setback. The property was subdivided in 2016 and the house was constructed in 2019. The applicants purchased the house in 2020.

Scott Mackenzie, 400 Thomas Street, said that he purchased the home as a second home and it will eventually be his retirement home. Mr. Mackenzie said he spoke to the contractor who built

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the fence and deck and the contractor informed him that a permit was not needed. Mr. Mackenzie submitted an email from his real estate agent, who was also told by the contractor that a permit was not needed. Mr. Mackenzie said that due to the small and narrow size of the lot, it was difficult to build a deck without pushing into the side and the back is sloped. Mr. Mackenzie said the crawl space is still accessible.

Derek Allen, Allen, Stahl and Kilbourne Law Firm, said that Mr. Mackenzie had talked to his immediate adjacent neighbors and they all did not have an issue with the deck and he did receive a conflict waiver from Christopher Eller, who owns the lot next door, but it was not submitted into evidence. Mr. Allen reiterated again that the lot is narrow and there is a small building envelope.

Ms. Tipton listed all of the exhibits presented:

- Exhibit 1: Staff Report
- Exhibit 2: Variance Application
- Exhibit 3: Picture of 714 Rhododendron Avenue
- Exhibit 4: Picture of 714 Rhododendron Avenue
- Exhibit 5: Receipt of Payment
- Exhibit 6: Buffer Map
- Exhibit 7: List of Property Owners
- Exhibit 8: Notice of Variance Request
- Exhibit 9: Certificate of Mailing
- Exhibit 10: Aerial Map
- Exhibit 11: Picture of Property Posting
- Exhibit 12: Ordinance 4.3.3
- Exhibit 13: Ordinance 2.1.4
- Exhibit 14: Legal Notice
- Exhibit 15: Owner Consent Form for Virtual Meeting
- Applicant Exhibit 1: Email from Real Estate Agent

Ted Mattson made a motion to go into recess to discuss the case. The motion was approved by consensus by a vote of 5-0. The board discussed the applicant not obtaining a building permit before starting the project. Ted Mattson said he looked at as if the deck were not there and the applicant was coming to the board for the request.

Bob Osmundsen made a motion to close the public hearing. The motion was seconded by Ted Mattson and approved by a vote of 5-0.

The board found the following facts:

1. That unnecessary hardships would result from the strict application of the Ordinance in that a hot tub cannot practically be installed without a deck, a smaller deck will not accommodate a hot tub, and there is no other place on the lot where a deck can be constructed.
2. That the hardship results from the long narrow shape of the lot and the slope of the property which are peculiar to the property.
3. That the hardship did not result from actions taken by the applicant as they had no control over the shape or grade of the lot or the location of the house on the lot as it was built before they purchased it.
4. That the requested variance is consistent with the spirit, purpose and intent of the ordinance as it will allow the use of a deck of adequate size allowing safe use of both the hot tub and the deck and that substantial justice will be achieved by the variance by

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allowing the applicant to have a deck as is allowed by the ordinance and which other owners of properties without the zoning district are allowed to have.
Ted Mattson made a motion to grant the variance as requested to reduce the side setback from ten feet to two and a half feet. The motion was seconded by Patrick Prosser. The motion passed with a vote of 4-1 with Patrick Prosser voting against the motion.

2. Introduction of Jake Hair, Planner

Jennifer Tipton introduced Jake Hair who is the new Planner/Zoning Administrator. Jake joins us from Currituck County and has been here for a little over a month. Jake told the board he was happy and excited to be here and looks forward to working with them.

VI. COMMUNICATION FROM ZBA

None.

VII. COMMUNICATION FROM STAFF

None.

VIII. ADJOURNMENT

Ted made a motion to adjourn at 6:53 p.m. The motion was approved by consensus by a vote of 5-0.

Prepared by:

Cheryl Milton, Chair

Jennifer Tipton, Senior Admin

, Secretary

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