



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, Senior Admin
Re: Agenda Packet for December 17, 2020
Date: December 10, 2020

The **Town of Black Mountain Zoning Board of Adjustment** will meet on **Thursday, December 17, 2020 at 6:00 p.m.** electronically via Zoom.

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

1. The proposed agenda;
2. Draft minutes from August 20, 2020;
3. Election of Officers; and
4. Variance Request for 101 Connally Street.

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
Jake Hair, Planner
Ron Sneed, Town Attorney



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, December 17, 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/86589648494>

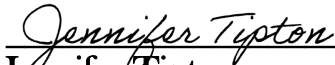
Meeting ID: 865 8964 8494

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: 865 8964 8494 followed by the Pound sign (#)



Jennifer Tipton
Clerk to ZBA

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Posted to the Town Bulletin Board 11/30/2020
www.townofblackmountain.org



**Zoning Board of Adjustment Regular Meeting
December 17, 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 August 20, 2020 as written [or as amended]

IV. OLD BUSINESS

V. NEW BUSINESS

- Election of Officers
- Variance Request for 101 Connally Street

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, 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

Zoning Board of Adjustment Regular Meeting
August 20, 2020

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

Zoning Board of Adjustment Regular Meeting
August 20, 2020

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

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

Case No: V-20-02

Case Name: 101 Connally St

Hearing Date: December 17, 2020

Procedure: Zoning Board of Adjustment

Address of Variance Request:

101 Connally Street

Black Mountain, NC 28711

PIN #0619-26-3621.00000

Applicant:

Martia Rachman

109 First Street

Black Mountain, NC 28711

Request:

The applicant is seeking a variance to allow an existing garage to be 5' from the rear property line because they are wanting to convert the garage into living space which requires they meet the current 15' setback.

City Staff:

Jake Hair, Planner

Jennifer Tipton, Clerk to ZBA

I. SUMMARY OF REQUEST

The applicant is requesting to reduce the rear setback from fifteen feet (15') to five feet (5') to convert a garage to a secondary dwelling.

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 TR-4(Town Residential) and required setbacks are as follows:

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

The surrounding properties are zoned and developed for residential use.

	North	South	East	West
Adjacent Zoning Designation	TR-4	TR-4	TR-4	TR-4
Adjacent Land Uses	Residential (single-family)	Residential (single-family)	Residential (single-family)	Bed and Breakfast Inn

Existing Conditions

The subject property is a .28 acre parcel in the TR-4 zoning district. The average slope of the lot is .12%. The house was built in 1924 and the garage was constructed in 1994 making them both grandfathered in to current setback requirements.

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 November 30, 2020 and on the Town of Black Mountain website on November 30, 2020. Legal notice appeared in the Black Mountain News the weeks of December 3, 2020 and December 10, 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 is purchasing the home in December 2020. The new owners are wanting to convert the existing detached garage into a secondary dwelling. The ordinance requires secondary dwellings meet the same setbacks as the primary structure.

Per Section 5.19.1 (A), Secondary dwellings shall meet the setbacks of the principal structure as set forth for the zoning district in which it is located.

The owners cannot move the structure to meet the setback as it can only be move forward and secondary dwellings are not allowed to be in the front yard.

Per Section 5.19.1 (D), No secondary dwelling will be sited between the principal building and an adjacent public roadway, not including a private alleyway or driveway.

The homeowner states that the home needs additional living space and this is the easiest and most cost efficient way to obtain the extra space. They state that it would cause unnecessary hardship and financial burden to renovate the existing home for extra square footage.

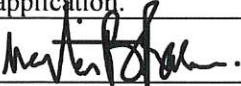
Per Section 2.1.4 of the Town of Black Mountain Land Use Code, a permit is required before work is begun and a permit shall not be issued until the town zoning administrator has provided authorization that the proposed structure is in compliance with the zoning district in which it is located.

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 secondary dwellings are a permitted use by right in the TR-4 district and the garage conforms to all other setback requirements for the front and side yard. The living space will have to be 50 percent of the square footage of the livable area of the primary structure or 1,100 square feet, whichever is less per Section 5.19.1 (C).

VARIANCE APPLICATION www.townofblackmountain.org

PROPERTY OWNER INFORMATION		
Owner Name Martia Rachman		
Owner Address (Number, Street, City, State, ZIP) 109 First Street, Black Mountain NC 28711		
Home Phone 828-275-4028	Cell Phone 828-275-4028	Email Address martiarachman@yahoo.com
APPLICATION FOR VARIANCE		
I request a variance/variances from the following provisions of the ordinance:		
Section Number(s): 5.19 Section Title(s): Secondary Dwelling		
Subsection letter(s) and/or number(s): 5.19.1A Subsection Title(s): Secondary Dwellings Setback		
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 (<i>if applying for a variance in dimensional requirements, state the revised setbacks or height limitations desired below</i>): I am asking relief from the 15 foot setback requirements to the rear of an existing structure on my property which is currently 5' setback. All other setbacks required by code meet the requirements. I am asking for a 10 foot variance.		
PROPERTY INFORMATION		
Parcel Number 0619 26-3621 0649266362400000	Current Zoning R10 TR-4	Acreage .28
Address 101 Connally St., Black Mountain, NC 28711		
Average Slope % little to no slope. 12%	Use of Property Secondary Dwelling	
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 	11/12/20 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.
Additional living space is needed for the property and it would cause unnecessary hardship and financial burden to
renovate the existing home for extra square footage.

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.
The location of the current main home makes the addition of the 707sq ft needed, impossible to do to the existing
setback requirements to the existing main home. In addition, the current structure is already present and will be
would not meet the requirements of 5.1.19d to be moved forward therefore my request is to maintain the current
structure as-is with use of 707 square feet (1/2 of the current home).

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.
The current accessory building was built in 1994 by the previous owner.

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.
There is absolutely no change to the character of the neighborhood, size, or position of the current structures on the
property.

Town of Black Mountain
160 Midland Avenue, Black Mountain, NC 28711
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Applicant Consent and Acknowledgement for Holding a Virtual Quasi-Judicial Hearing

RE: Variance Request for 101 Connally Street

I, **Martia Rachman**, applicant for the requested variance at 101 Connally Street, 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 my 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

11/17/20

Date

Please return no later than December 14, 2020 to:

Jennifer Tipton
160 Midland Avenue
Black Mountain, NC 28711

or

jennifer.tipton@townofblackmountain.org

or

Fax to: 828-669-2030

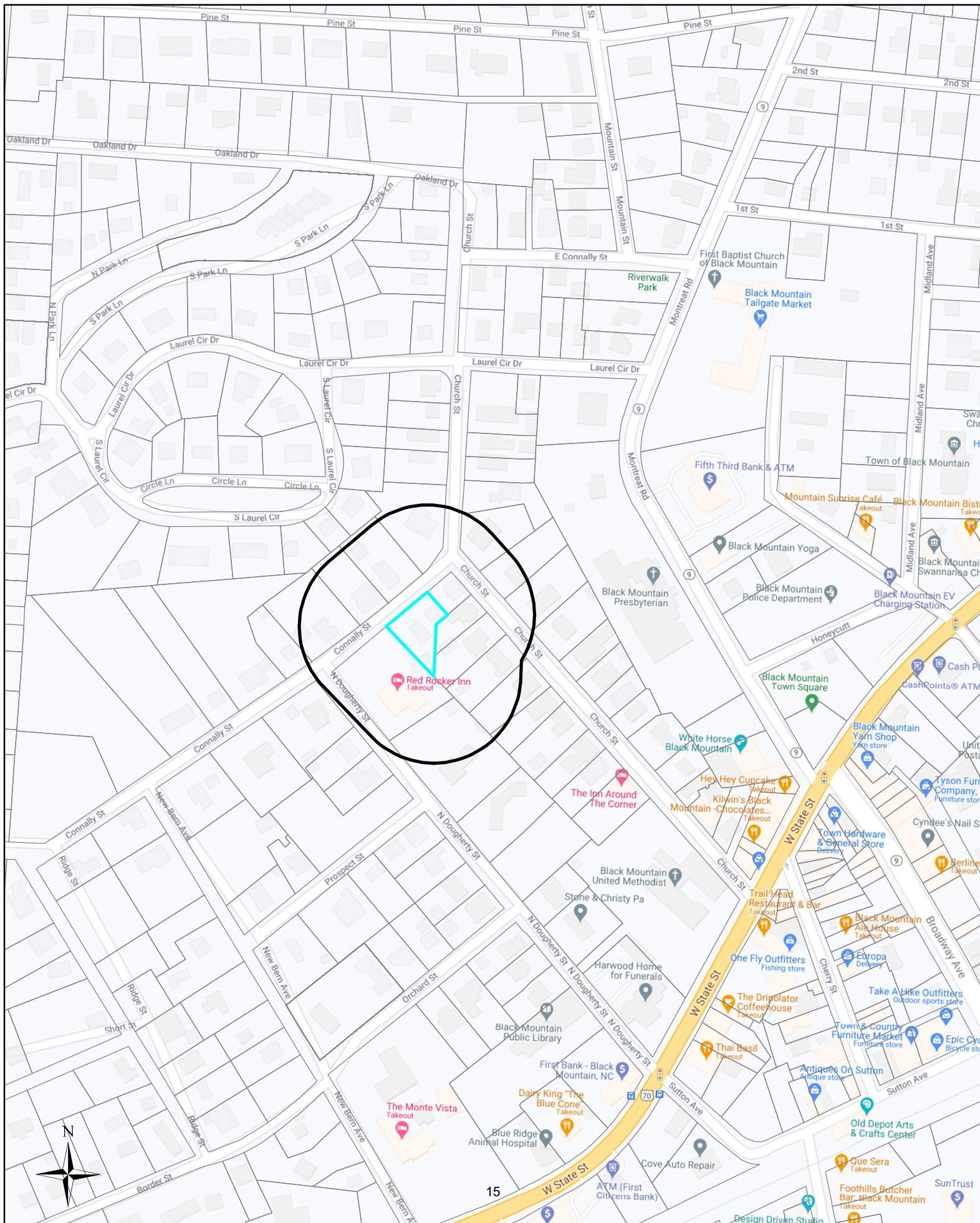
RECEIPT

Date: Nov. 13, 2020 Amount Paid: 350⁻
Customer: Martha Rachman
For: variance application - 101 Connally St
Balance: \$
check # 1051
Received by: Jennifer Upton



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

101 Connally Street Buffer Map



<u>Name</u>	<u>Address</u>	<u>City</u>	<u>State</u>	<u>ZIP</u>	<u>PIN #</u>
Grady W & Betty T Rozzell	101 Connally Street	Black Mountain	NC	28711	0619-26-3621
Olive Tree Hospitality LLC	136 N Dougherty Street	Black Mountain	NC	28711	0619-26-2478
Joseph M & Carol Tyson	309 N Dougherty Street	Black Mountain	NC	28711	0619-26-0389
Jean B & Carl E Franklin	108 Connally Street	Black Mountain	NC	28711	0619-26-0508
J L & Priscilla Hopkins	106 Connally Street	Black Mountain	NC	28711	0619-26-0684
102 Connally Street LLC	521 E Morehead St., Ste. 350	Charlotte	NC	28202	0619-26-1772
Worth & Pamela Autrey Hester	PO Box 1202	Black Mountain	NC	28711	0619-26-2756
Kenneth & Susan Stuchlik Edwards	205 Church Street	Black Mountain	NC	28711	0619-26-3807
Robt C & Claudia K Watts	130 Church Street	Black Mountain	NC	28711	0619-26-5932
Elizabeth Provost & Paul W Drummond	126 Church Street	Black Mountain	NC	28711	0619-26-5813
Joann Burkinshaw & Jolan S Tobin	709 Princess Street	Wilmington	NC	28401	0619-26-5776
Martha Bryan Wight	64 Willowbrook Road	Asheville	NC	28805	0619-26-6720
Andrew M & Heidi S Linton	120 Church Street	Black Mountain	NC	28711	0619-26-6682
E H & Ruby Knight	117 Church Street	Black Mountain	NC	28711	0619-26-5389
Polly C Haigler	119 Church Street	Black Mountain	NC	28711	0619-26-5445
George M & Maria D Williams	121 Church Street	Black Mountain	NC	28711	0619-26-4580
Rachael S Calloway	PO Box 587	Browning	MT	59417	0619-26-4557
Julie A Hightower	125 Church Street	Black Mountain	NC	28711	0619-26-4633
Lynn E Webber & Thomas Patteson	127 Church Street	Black Mountain	NC	28711	0619-26-4609
Zachary & Jill Dasher	132 N Dougherty Street	Black Mountain	NC	28711	0619-26-4311



Town of Black Mountain

160 Midland Avenue ♦ Black Mountain, North Carolina, 28711
Phone: 828-419-9300 ♦ Fax: 828-669-2030 ♦ TDD: 1-800-735-5962

NOTICE OF VARIANCE REQUEST (REGARDING NEIGHBORS WITHIN 200 FEET OF PROPERTY)

DATE: **December 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:

**Martia Rachman
101 Connally Street**

Property Description/PIN #: **0619-26-3621.00000**

Current Zoning Classification: **TR-4 (town 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 rear setback from fifteen feet (15') to five feet (5') to allow garage to become a secondary dwelling.

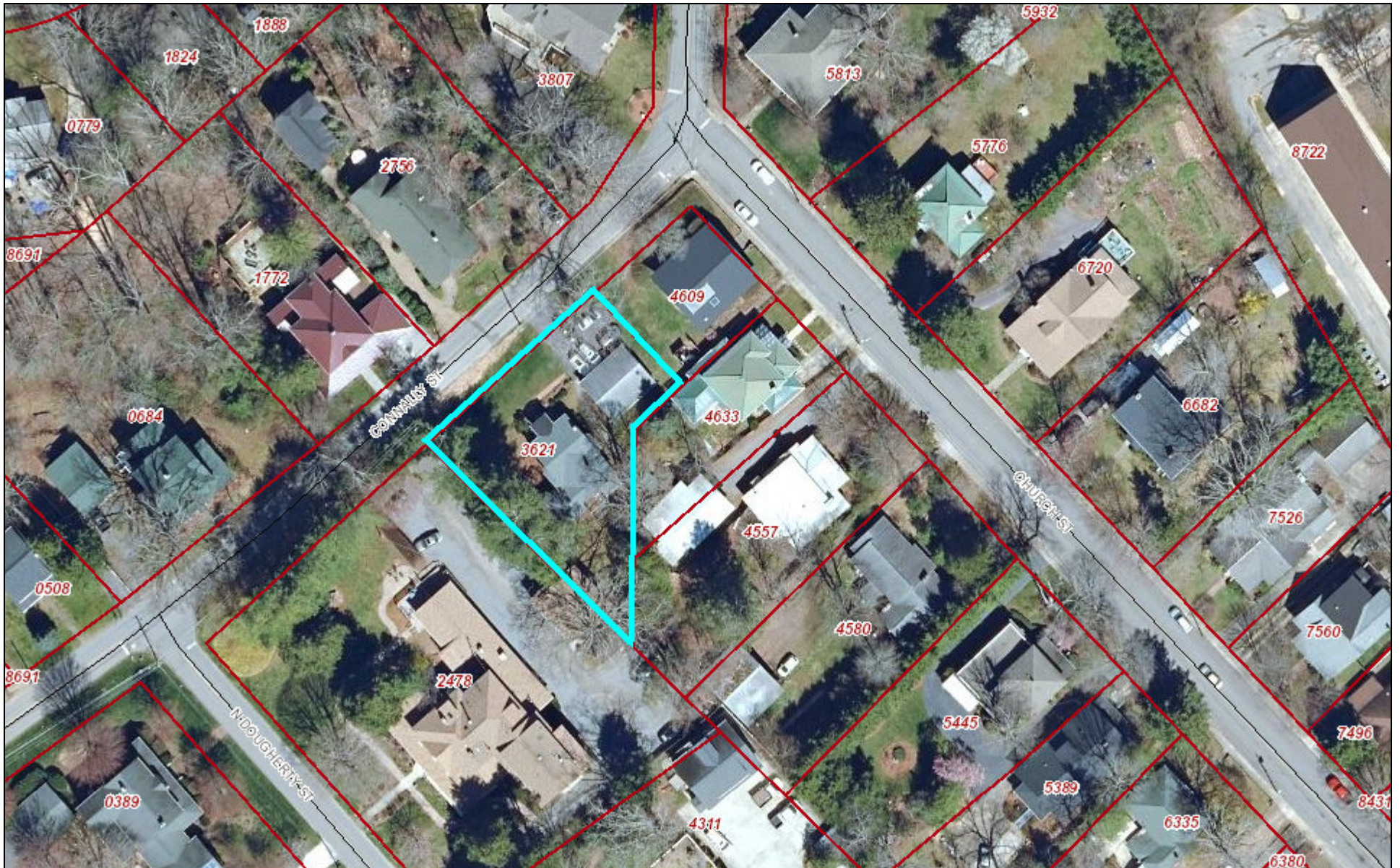
The applicant believes that the variance be granted for the following reasons:

Additional living space is needed and the existing garage meets all the requirements of a secondary dwelling except for the rear setback.

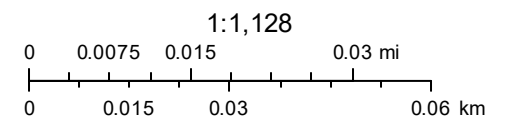
A public hearing will be held on Thursday, December 17, 2020 @ 6:00 p.m. via Zoom. Details regarding the Zoom meeting are on the additional pages attached to this notice.

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.

101 Connally Street Aerial Map - 2020 map



November 17, 2020





LEGAL NOTICE

BLACK MOUNTAIN ZONING BOARD OF ADJUSTMENT EVIDENTIARY HEARING

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**Jennifer Tipton
Clerk to ZBA**

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EVIDENTIARY HEARING

Thursday, December 17, 2020
6:00 PM

www.townofblackmountain.org

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