



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 Board of Adjustment
From: Jennifer Tipton, Senior Admin
Re: Agenda Packet for August 19, 2021
Date: August 6, 2021

The **Town of Black Mountain Board of Adjustment** will meet on **Thursday, August 19, 2021, at 6:00 p.m.** in Town Hall at 160 Midland Avenue and electronically via Zoom.

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

1. The proposed agenda;
2. Draft minutes from July 15, 2021;
3. Informational Brochure;
4. Review of Rules of Procedure; and
5. Evidentiary Hearing Procedure.

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
Jake Hair, Planner
Ron Sneed, Town Attorney



PUBLIC NOTICE

BLACK MOUNTAIN BOARD OF ADJUSTMENT

The Black Mountain Board of Adjustment will meet for their regular meeting scheduled on **Thursday, August 19, 2021, at 6:00 p.m.** in the Council Meeting Room at Town Hall, 160 Midland Avenue, Black Mountain, NC 28711. A Zoom link is also provided for anyone wishing to participate but is not able to attend in-person.

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

1. **Attend the meeting in-person at Town Hall.**
2. **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/86172299568>

Meeting ID: 861 7229 9568

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.

3. **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: 861 7229 9568 followed by the Pound sign (#)

Jennifer Tipton
Senior Admin

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Posted to the Town Bulletin Board 08/02/2021
www.townofblackmountain.org



AVISO PÚBLICO

LA JUNTA DE AJUSTE DE BLACK MOUNTAIN

La Junta de Ajuste de Black Mountain se reunirá para su reunión regular programada el **jueves 19 de agosto de 2021, a las 6:00 p.m.** en al Sala de Reuniones del Consejo en Town Hall, 160 Midland Avenue, Black Mountain, NC 28711. También se proporciona un enlace de Zoom para cualquier persona que desee participar pero no pueda asistir en persona.

Hay tres formas en que el público puede participar en la reunión:

1. **Asistir a la reunión en persona en al Ayuntamiento.**
2. **Únase a la reunión a través de Zoom en su computadora o dispositivo inteligente.**
***Las transmisiones de video ciudadanas no estarán habilitadas. No hay contraseña.**

<https://us02web.zoom.us/j/86172299568>

ID de reunión: 861 7229 9568

Si no ha utilizado Zoom antes en una computadora o dispositivo inteligente, le recomienda descargar la aplicación desde su sitio web en [Zoom.us/download](https://zoom.us/download) y probarla antes de la reunión. No hay ningún costo asociado con el software o asistir a la reunión y hay opciones de número gratuito para marcar para escuchar solo en vivo.

3. **Únase a la reunión por teléfono (solo escuchar).**

Simplemente llame al **número gratuito 1-877-853-5247** o al **número gratuito 1-888-788-0099**

ID de reunión: 861 7229 9568 followed by the Pound sign (#)

Jennifer Tipton
Administrador Senior

La ciudad de Black Mountain se compromete a proporcionar instalaciones, programas y servicios accesibles para todas las personas en cumplimiento con la Ley de Estadounidenses con Discapacidades (ADA). Si necesita ayuda o un alojamiento en particular para esta reunión, comuníquese con Jennifer Tipton al (828) 41-9371 o por correo electrónico a Jennifer.tipton@townofblackmountain.org

Publicado en el Tablón de Anuncios de la Ciudad 08/02/2021

www.townofblackmountain.org



**Zoning Board of Adjustment Regular Meeting
August 19, 2021**

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 July 15, 2021 as written [or as amended]

IV. OLD BUSINESS

V. NEW BUSINESS

- Informational Brochure
- Review Rules of Procedure
- Evidentiary Hearing Procedures

VI. COMMUNICATION FROM ZONING BOARD OF ADJUSTMENT

VII. COMMUNICATION FROM STAFF

VIII. ADJOURNMENT

The Black Mountain Zoning Board of Adjustment held its regular meeting on Thursday, July 15, 2021, at 6:00 p.m. in Town Hall at 160 Midland Avenue, Black Mountain, North Carolina and virtually via Zoom.

I. CALL TO ORDER

The meeting was called to order with the following members present:

John DeWitt, Vice Chair
Jillian Ballard
Greg Feightner
Patrick Prosser
Janet McKimpson

Staff:

Jennifer Tipton, Senior Admin
Jake Hair, Zoning Administrator/Planner I
Ron Sneed, Town Attorney

The meeting was called to order at 6:00 p.m. and duly constituted and opened for business with a quorum of five (5) regular members.

II. ADOPTION OF AGENDA

Jillian Ballard made a motion to adopt the agenda as presented. The motion was seconded by Greg Feightner and approved by a vote of 5-0.

III. ADOPTION OF MINUTES

Greg Feightner made a motion to adopt the minutes of June 17, 2021 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. Election of Officers

Patrick Prosser nominated John DeWitt for Chair. The motion was seconded by Janet McKimpson and approved by a vote of 5-0.

Janet McKimpson nominated Jillian Ballard for Vice Chair. The motion was seconded by Greg Feightner and approved by a vote of 5-0.

2. Discussion of Creating a Guiding Document for Applicants

John DeWitt began the discussion by talking about the Settings development and their more restrictive guidelines. Mr. DeWitt said he met with some members of the Design Review Board (DRB) and has received some information about their guidelines and processes and while the Town has the legal authority to approve or deny a variance from Town ordinances, the DRB has the homeowner's authority to approve or deny a variance from their guidelines. The thought of the DRB is that some property owners are coming to the Town first to gain approval and then

Zoning Board of Adjustment Regular Meeting
July 15, 2021

using that as a marketing tool to sell the property even though there is not a guarantee that a variance would also be granted by the DRB. Town Attorney Ron Sneed also pointed out that the Settings is unique in that most developments don't have requirements that overlap with the zoning requirements but the Settings does and that requires homeowners to also seek a variance from the DRB.

Patrick Prosser spoke about the brochure that was created for the Town Council and that we could modify that brochure to fit the needs of this board and explain who the board is, what the board does, and the process for submitting information and hearings. It was suggested that the brochures be included with the notifications that are mailed out to property owners.

Another comment was that applicants sometimes also seem confused about the process and that maybe there is a way to make the application and process easier to understand. Greg Feightner said that it should be easy for applicants to understand the process particularly if they do not have the resources available to hire an attorney, do a traffic study, etc. and suggested taking the opening statement that is read at the meetings and breaking it down to make it easier to understand. Mr. Sneed suggested having a brochure for each topic (variances, special use permits, and appeals), because they each have a different process and then have a general brochure about the board and how the board functions. Mr. Sneed did say that the board cannot require applicants in the Settings to go to the DRB first but they can recommend it. It was also suggested that some of the information from the School of Government videos be used in the brochures. The board formally asked staff to create a draft brochure and then the board will review at their next meeting.

3. Training with Town Attorney Ron Sneed

Mr. Sneed began by talking about the links to the School of Government webinars and that those offer good information but might be a little outdated since the passage of Chapter 160D but said that Adam Lovelady from the School of Government will more than likely update them soon. Mr. Sneed said that the board of adjustment does not set policy and is not a sympathy board. The board must hear facts to prove a case and is based on the rule of evidence. Board members and parties have the opportunity to cross examine and board members are allowed to ask questions to pick out facts. The board must hear a case, make a decision and come up with an order and Mr. Sneed wants to make sure that the order will survive Superior Court if the case is appealed. Mr. Sneed provided several handouts including Chapter 160D-302 which is the establishing statute that allows the creation of a board of adjustment, Chapter 160D-705 which is about quasi-judicial zoning decisions, and Chapter 160D-109 which is the new conflicts of interest statute. The board of adjustment can hear appeals, variances and special use permits. The board is prohibited from doing homework, meaning that they cannot research the case. The decision must be based on the facts presented at the hearing. The board is allowed to do a drive-by site visit, can look at the packet, and can read the ordinances related to the case. Board members must disclose ex parte communications and this can include disclosing that they did a drive-by site visit or that they were approached at the grocery store by a citizen who asked about the case. Board members are not to discuss the case with anyone and if someone does approach a board member and asks about a case, they are to say that they cannot discuss it. It is also important to note that board members cannot discuss a closed case until thirty days after the hearing and if no one has appealed the case.

Hearings may be continued if board members feel that they do not have enough facts to make a decision. A continuation is different from a rehearing in that a continuation is the same meeting

just ongoing and a rehearing can only take place if there has been a significant change from when the decision was made. Applicants may also be given the opportunity to withdraw their application and reapply when they have all of their information and the filing fee can be waived. The burden of proof is never on the board. The burden of proof is always on the applicant for variances and appeals, but for special use permits, the applicant just have to have a little bit of evidence that they meet the requirements and the burden of proof shifts to the opposition to prove why they do not meet the requirements.

There are four standards that are required to be met for a variance and variances require a super majority. The only time development restrictions or covenants will come into play with a variance is when they require a certain sized house to be built.

Due process is important for boards of adjustment as applicants are entitled to present to an impartial body who will listen to the evidence and make a decision based on facts and not opinion or feelings. Evidence presented must be competent, material and substantial.

The new conflict of interest statute states that member may not participate if they, a family member or a business partner will have a financial interest in the outcome of the decision. The board does act like a jury except that they cannot deliberate in private. All discussions must be done in open session and be loud enough for everyone to hear and to be recorded. The policy of the board of adjustment has been to have a recess before closing the public hearing so that they can determine if any more questions need to be asked because once the public hearing has been closed, no more questions may be asked of anyone, including staff.

The board does not have to allow people to talk and only people with standing will be allowed to provide witnesses and have the ability to cross examine witnesses. Those always having standing will be the Town and the applicant. For another person to have standing they must prove that they will be harmed in some way different than the public at large. Most of the time that will be having an appraiser speak about loss of value but can include traffic, stormwater, or safety. The person proving standing cannot prove standing based on their own opinion and must have evidence, facts, or professional opinions.

For appeals, the board has no discretion to hear an appeal if it has been filed untimely. Appeals to Superior Court are based on the record and the court will not rehear any evidence. The Court will look the record and determine if the evidence supports the facts in the order. The Court can uphold the decision, overturn the decision, or remand back to the board to fix the order or to rehear the entire case. The board will hear appeals from the Historic Preservation Commission for appeals of Certificates of Appropriateness and will do the same thing as Superior Court and will only review the record.

VI. COMMUNICATION FROM ZBA

None.

VII. COMMUNICATION FROM STAFF

None.

VIII. ADJOURNMENT

Janet McKimpson made a motion to adjourn at 7:31 p.m. The motion was approved by consensus.

Prepared by:

John DeWitt, Chair

Jennifer Tipton, Senior Admin

DRAFT

Mission Statement

The Municipal Government of Black Mountain strives to provide quality services to protect the health, safety and welfare of its citizens, exercise stewardship over its resources, promote a high quality of life, support economic prosperity, cultivate community, and honor its heritage and culture.

Town of Black Mountain Department Contact Information

Phone: (828)419-9300 Fax: (828)669-4204

Administration:	419-9300 press 5
Building:	419-9300 press 4
Finance:	419-9300 press 5
Fire & Rescue:	419-9320 Non-Emergency
Human Resources:	419-9300 press 5
Planning:	419-9300 press 4
Police:	419-9350 Non-Emergency
Public Services:	419-9300 press 2
Recreation & Parks:	419-9300 press 7
Water	419-9300 press 1

For Police/Fire/Medical Emergencies Dial **911**

Board of Adjustment

<http://www.townofblackmountain.org>

John DeWitt, Chair
Jillian Ballard, Vice Chair
Janet McKimpson
Greg Feightner
Patrick Prosser
David Barley, Alternate

For more information visit our website.

<http://www.townofblackmountain.org>



Like us on Facebook!



WELCOME

to the meeting
of the
Town of Black Mountain
Board of Adjustment



Town of Black Mountain

160 Midland Avenue
Black Mountain, NC 28711(828)419-9300

Welcome

The Black Mountain Board of Adjustment hears and decides all matters related to variances, appeals and special uses.

The Black Mountain Board of Adjustment consists of five (5) sitting members and three (3) alternate members. Members served three-year terms and can serve two consecutive terms.

Regular Board of Adjustment meetings are held on the third Thursday of each month at 6:00 p.m. at Town Hall.

Applications to Board of Adjustment

The Black Mountain Board of Adjustment hears appeals, variances and special uses.

Appeals: The Board of Adjustment hears appeals of administrative decisions and the Historic Preservation Commission. Appeals must be made within thirty (30) days of receipt of the written notice. Appeals from the Board of Adjustment shall be made to Superior Court of Buncombe County.

Variances: The Board of Adjustment hears variances from the Town's Land Use Code. Variances are intended to provide limited relief from regulations in 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 under the Land Use Code.

Special Uses: The Board of Adjustment hears requests for special use permits. Special use permits required additional development standards be met to insure the same compatibility as uses permitted by right.

Evidentiary Hearings

The Board of Adjustment conducts evidentiary hearings.

The purpose of an evidentiary hearing is to gather facts and not to solicit citizen opinions.

Evidentiary hearings resemble a court hearing where testimony is presented and the Board of Adjustment acts like a court of law. The Board of Adjustment receives only sworn testimony and other credible evidence. The Board of Adjustment must make findings of fact based upon the evidence presented. All parties wishing to testify are sworn in under oath.

Parties must have substantial and competent evidence and/or professional opinions to support their case.

All meeting are open to the public and all business of the Board of Adjustment is conducted in open, public sessions.

Conduct

Evidentiary hearings before the Board of Adjustment are less formal than a courtroom trial. All participants are expected to observe basic decorum one would expect in a court of law and show respect for the Board and all other participants.

The Chair may rule out of order any comments if such comments are unruly or are repetitive of information previously received. The Chair may also rule out of order any comments that are rude, inappropriate, or intended to harass any person or group of people, and is authorized to take reasonable and appropriate measures to ensure compliance with these rules.

Comments

While the Board of Adjustment meetings are open to the public, not all participants will be able to speak.

Parties with standing are those that are allowed to call witnesses, cross-examine witnesses, and present evidence. Parties with standing include the Town, the applicant, and those persons who will be harmed in a manner different than that of the public at large.

The Chair may permit other persons to speak, however, the Chair may also not allow comments if they are not factual or do not offer any evidence to the case.

Written comments are not permitted unless the author of the comments is available at the meeting to answer questions. These comments are considered hearsay and cannot be used by the board when making a decision.

It is not permissible to contact any of the board members prior to an evidentiary hearing as this is considered ex-parte communication and could be a potential conflict of interest.

Questions regarding evidentiary hearings, meeting procedure, or how to participate in a meeting must be directed to staff.

Contact Us

Town of Black Mountain

160 Midland Avenue
Black Mountain, NC 28711
(828)419-9300

Visit our Website

<http://www.townofblackmountain.org>

Contact the Clerk to Board of Adjustment

Jennifer Tipton
(828)419-9371
jennifer.tipton@townofblackmountain.org



**RULES OF PROCEDURE OF
THE ~~ZONING~~ BOARD OF ADJUSTMENT
OF THE TOWN OF BLACK MOUNTAIN
~~Amended November 21, 2013~~**

~~I. GENERAL RULES~~ AUTHORIZATION AND PURPOSE

The ~~Zoning~~ Board of Adjustment shall be governed by the terms of Chapter **160D-302** ~~160A, Article 19, and Part 3~~ of the General Statutes of North Carolina **and Division 6 of the Town of Black Mountain Code of Ordinances** ~~by the Ordinances of Black Mountain. All regular and alternate members of the Board shall thoroughly familiarize themselves with these laws.~~ **The purpose of the rules of procedure are to clarify procedures and governing terms for how the Board of Adjustment membership conducts its meetings. The rules of procedures are not intended to add, modify, or delete provisions from the Town of Black Mountain Code of Ordinances.**

~~II. OFFICERS AND DUTIES~~ MEMBERSHIP, OFFICERS, AND STAFFING

- 1. The Board of Adjustment ("The Board") consists of five regular members and three alternate members, all of whom shall reside within the corporate limits of the Town and who are appointed by the Town Council as described in the Town Ordinance.**
- 2. Terms of appointment for regular Board members shall be three years from date of appointment, ending June 30.**
- 3. The Board members shall meet and elect a chair, vice chair and secretary by a majority vote of the membership on an annual basis.**
- 4. At meetings, the Chair shall serve as the presiding officer, managing the agenda, facilitating discussion and debate, calling and accounting for votes, and keeping hearings orderly and effective.**
- 5. In absence of the Chair, the Vice-Chair shall serve as the presiding officer. In absence of the Chair and Vice-Chair, the Secretary shall serve as the presiding officer.**
- 6. The Clerk to the Board or the Zoning Administrator shall assist the Board in conducting their business. The Clerk to the Board or the Zoning Administrator shall be responsible for the keeping of the records of the Board including minutes, and will prepare and deliver notices of meetings and hearings of the Board. The**

minutes shall show the record of all important facts pertaining to each meeting and hearing, every order adopted by the Board, and all votes of members of the Board on any final determination of any question, indicating the names of members who are absent or fail to vote. The Clerk to the Board or the Zoning Administrator shall prepare public notices required to be given, notification of members of pending meetings and their agenda, and notification to parties to cases before the Board of its decision on such cases. The Zoning Administrator shall be present at all meeting in which his/her determination is being appealed.

~~A.—Chairman.—A chairman shall be elected by the full membership (including alternate and extraterritorial members) of the Board of Adjustment. His/her term of office shall be one year and until his successor is elected, beginning on July 1 or at the first meeting of the Board after July 1 of each year, and he/she shall be eligible for re-election. The chairman elected in the previous year shall continue to serve until the meeting at which the new chairman is elected. The chairman shall decide on all points of order and procedure, subject to these rules, unless directed otherwise by a majority of the Board in session at the time. The chairman shall appoint any committees found necessary.~~

~~B.—Vice Chairman.—A vice chairman shall be elected by the Board in the same manner and for the same term as the chairman. He/she shall serve as acting chairman in the chairman's absence, and at such times he shall have the same powers and duties as the chairman.~~

~~C.—Secretary.—A secretary shall be appointed by the chairman of the Board from within its membership to hold office during the term of the chairman and/or until a successor secretary has been appointed. The secretary shall be eligible for reappointment.~~

~~D.—Clerk and Zoning Administrator.—A clerk may be appointed by the Town to assist the Board. The clerk, subject to the direction of the chairman, secretary and the Board, shall be responsible for the keeping of the records of the Board including minutes, and may assist in the preparation and delivery of notices of meetings and hearings of the Board. The minutes shall show the record of all important facts pertaining to each meeting and hearing, every resolution or order adopted by the Board, and all votes of members of the Board on any resolution or final determination of any question, indicating the names of members who are absent or fail to vote. The clerk may assist the Zoning Administrator in the preparation of required documentation for hearings and notices of hearings as set out in the Town ordinances for appeals, conditional or special uses and variance. The Zoning Administrator shall prepare public notices required to be given, notification of members of pending meetings and their agenda, notification to parties to cases before the Board of its decision on such cases, and shall assist in the general supervision of the clerical work of the Board, including preparation of materials and notices. The Zoning Administrator shall be present at all meetings in which his determination is being appealed.~~

III. ~~ALL MEMBERS~~ THE PRESIDING OFFICER

1. The Presiding Officer shall have the following powers:

- a. To ask for motions for consideration or action;
 - b. To rule motions in or out of order, including any motion patently offered for obstructive or dilatory purposes;
 - c. To determine whether a speaker has gone beyond reasonable standards of courtesy in his/her remarks and to entertain and rule on objections from other members on this ground;
 - d. To entertain and answer questions of procedure;
 - e. To call a brief recess at any time; and
 - f. To adjourn in an emergency.
2. A decision by the Presiding Officer or by a quorum under any of the first three powers listed may be appealed to the Board upon a motion of any member. Such a motion is in order immediately after a decision under those powers is announced and at no other time. The member making the motion need not be recognized by the Presiding Officer, and the motion, if timely made, may not be ruled out of order.

~~Alternate members of the Board shall be required to attend all meetings and hearings. All members, upon receiving notice of a special meeting that they cannot attend or on learning that they will be unable to participate in a particular case, shall give prompt notice to the Board chairman or clerk that they are unable to attend or to participate. On receiving such notice, the chairman or clerk shall, by the most expedient means, notify an alternate member to replace the absent regular member. Assignments shall be rotated among the alternate members when possible, with each alternate serving in a hearing before any alternate is called to serve again. At any meeting that they are called on to attend, alternate members shall have the same powers and duties as regular members. At no time shall more than five members participate officially in any meeting or hearing. Alternates are subject to the same rules of attendance as regular members.~~

~~IV. RULES OF CONDUCT FOR ALL MEMBERS~~ MEETING AND ATTENDANCE

1. The Board shall meet each month on the third Thursday at 6:00 p.m. All meetings of the Board of Adjustment shall be governed by the State's Open Meetings Law and shall be advertised, posted, and open to the public.
2. Special meetings of the Board may be called at any time by the chair. At least 48 hours' notice of the time and place of special meetings shall be given to each member of the Board and notice of such meetings shall be posted and published as required by law.

3. If there are no appeals, applications for special use permits or variances, or other business for the Board, or if so many regular and alternate members notify the Zoning Administrator or the Clerk to the Board they cannot attend and that five members will not be available, the meeting may be canceled by giving written or oral notice to all members not less than twenty-four hours before the time set for the meeting if at all possible.
4. If a meeting is for the purpose of hearing appeals, applications for special use permits or variances, or other business for the Board, the Zoning Administrator or the Clerk to the Board shall notify the other members of the Board and the parties to the matters to be heard by the Board of a later date to which the hearing shall be continued. If the continuance occurs as the result of a lack of five board members present, and the date to which such hearing is continued is later than the next regular meeting of the Board, notice of such new hearing shall be posted and published giving notice of the new date, time and place and the matters to be heard.
5. Faithful attendance is considered a prerequisite for the maintenance of membership in the Board. Members should notify the Zoning Administrator or the Clerk to the Board if unable to attend a regularly scheduled meeting.
6. Alternate members of the Board shall be required to attend all meetings and hearings. All members, upon receiving notice of a meeting that they cannot attend or on learning that they will be unable to participate in a particular case, shall give prompt notice to the Zoning Administrator or the Clerk to the Board that they are unable to attend or to participate. On receiving such notice, the Zoning Administrator shall, by the most expedient means, notify an alternate member to replace the absent regular member. Assignments shall be rotated among the alternate members when possible, with each alternate serving in a hearing before any alternate is called to serve again. At any meeting that they are called on to attend, alternate members shall have the same powers and duties as regular members. At no time shall more than five members participate officially in any meeting or hearing. Alternates are subject to the same rules of attendance as regular members.
7. Failure to attend three consecutive, regularly scheduled meetings without being excused will result in a notification to the absentee board member and the Town Council with a possible recommendation for dismissal.

~~A.—Members of the Board may be removed for cause, including violation of the rules state below.~~

~~B.—Faithful attendance at all Board meetings and conscientious performance of the duties required of Board members shall be considered a prerequisite of continuing membership on the Board.~~

~~C.—No Board member shall take part in the hearing consideration or determination of any case in which he is personally or financially interested.~~

~~D.—No Board member shall vote on any matter that decides an application or appeal unless he has attended the evidentiary hearing on that application or appeal.~~

~~E.—No Board member or alternate member shall discuss any case with any parties thereto before the evidentiary hearing on that case. Members may receive and/or seek information from the clerk before the hearing pertaining to the hearing date, time and place of the hearing, and materials submitted with the application or appeal.~~

~~F.—Members of the Board shall not express individual opinions on the proper judgment of any case with any parties thereto or among themselves other than during deliberation at the hearing before that case is determined. Violation of this rule shall be cause for dismissal from the Board.~~

V. MEETINGS QUORUM

1. A quorum shall consist of four members of the Board.

2. Any member who has withdrawn from a meeting without being excused by a majority vote of the remaining members present shall be counted as present for purposes of determining whether or not a quorum is present.

~~A.—Regular Meetings. There shall be one regular meeting of the Board each month, at a place and time as may be set forth from time to time by the Board.~~

~~B.—Special Meetings. The chairman may call special meetings of the Board at any time. At least 48 hour's notice of the time and place of special meetings shall be given, by either the secretary or the chairman, to each member of the Board, and notice of such meetings shall be posted and published as required by law.~~

~~C.—Cancellation and Continuances of Meetings. If there are no appeals, applications for conditional use permits or variances, or other business for the Board, or if so many regular and alternate members notify the secretary that they cannot attend and that 5 members will not be available, the chairman may dispense with a regular meeting by giving written or oral notice to all members not less than twenty-four hours before the time set for the meeting it at all possible. If a meeting is for the purpose of hearing appeals, applications for conditional use permits or variances, or other business for the Board, the clerk or the Zoning Administrator shall notify the other members of the Board and the parties to the matters to be heard by the Board of a later date to which the hearings shall be continued by first class mail. If the continuance occurs as the result of a lack of 5 Board members present, and the date to which such hearing is continued is later than the next scheduled regular meeting of the Board, notice of such new hearing shall be posted and published giving notice of the new date, time and place and the matters to be heard.~~

~~D.—Quorum. A quorum shall consist of four members of the Board, but the Board shall not pass on any question relating to an appeal from a decision, order, requirement, or determination of the Building Inspector or an application for a variance or conditional use permit when fewer than five members are present.~~

~~E.—Voting. All regular members may vote on any issue unless they have disqualified themselves for one or more of the reasons listed in Section IV. The required vote to decide appeals and conditional use applications shall be as provided in Section VI, D, 4, and shall not be reduced by any disqualification. For variance applications, the concurring vote of four-fifths of the Board members shall be necessary to grant a variance.~~

~~F.—Conduct of Meetings. All meetings shall be open to the public. The order of business at regular meetings shall be as follows: (a) roll call; (b) approval of minutes of the previous meeting; (c) hearing of cases including consideration and determination, unless final determination is delayed by a vote of a majority of the Board to allow the Board additional time to review the evidence; (d) reports of committees; and (e) business.~~

VI. APPEALS AND APPLICATIONS PROCEDURE

- A. All meetings shall be open to the public. The order of business at regular meetings shall be as follows: (a) roll call; (b) approval of agenda; (c) approval of minutes of the previous meeting; (d) hearing of cases including consideration and determination, unless final determination is delayed by a vote of a majority of the Board to allow the Board additional time to review the evidence; (e) any additional information; (f) communications from staff and/or board; and (g) adjournment.
- B. The Board shall hear and decide all appeals from and review any order, requirement, decision, or determination made by the Zoning Administrator. It shall also hear and decide all matters referred to it or on which the Zoning Ordinance of the Town of Black Mountain requires it to pass. In deciding appeals, the Board may hear both those based on allegedly improper or erroneous interpretation of the ordinance and those based on alleged hardship resulting from strict interpretation of the ordinance.
- C. No appeal shall be heard by the Board unless notice thereof is filed within thirty (30) days after the aggrieved party or parties receive final, binding, written notice of the order, requirement, decision, or determination by the Zoning Administrator. The applicant must file his application for a hearing with the Clerk to the Board. All applications shall be complete before an appeal may be considered as having been filed.
- D. Hearings.
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1. After notice of appeal, request for variance or request for special use permit is received, a hearing shall be scheduled for the next regular monthly meeting with sufficient time after the filing of the notice or request to allow for the proper notices to be given 10 to 25 days prior to the hearing.
 2. Notice of the hearing shall be given by mail to the owner and adjacent property owners within two hundred feet 10 to 25 days prior to the hearing. The notice shall state the location of the building or lot, the general nature of the question

involved in the notice or request, and the time and place of the hearing. At the same time, the property must be prominently posted with a notice of the hearing on the site that is the subject of the hearing. (A published notice is not required by statute; however it can be required by the local ordinance.)

3. Any party may appear in person or by an attorney at the hearing. The order of business for each hearing shall be as follows: (1) the chair, or such person as he/she shall direct, shall give a statement as to the function of the board in the type of matter before the board and the procedure to be followed for the particular hearing, together with any other explanatory statements as the board may adopt as part of the hearing introduction; (2) the Zoning Administrator shall give a preliminary statement of the case; (3) the applicant shall present the evidence and arguments in support of his/her application; (4) persons opposed to the granting of the application shall present evidence and arguments against the application; (5) both sides shall be permitted to present rebuttals to opposing evidence and arguments; and (6) the chair shall summarize the evidence that has been presented, giving the parties opportunity to make objections or corrections. Witnesses may be called and factual evidence submitted, but the Board shall not be limited to consideration of such evidence as would be admissible in a court of law. The Board may view the premises before the hearing, but the facts indicated by such inspection shall be disclosed at the evidentiary hearing and made a part of the record. All witnesses before the Board shall be placed under oath, and the opposing party may cross-examine them. The chair may limit the time of presentations or statements of those who are not parties to the case being heard and are not witnesses called by the parties to the case.
4. An application for a rehearing may be made in the same manner as an application for an original hearing. Evidence in support of the application shall initially be limited to what is necessary to enable the Board to determine whether there has been a substantial change in the facts, evidence, or conditions in the case, or if significant and substantial new evidence has been discovered. The Board shall deny the application for a rehearing if, from the record, it finds that there has been no substantial change in facts, evidence, or conditions, or newly discovered evidence. If the Board finds that change has occurred, it shall thereupon treat the request in the same manner as any other application. A rehearing will not be granted for the presentation of additional evidence that was readily discoverable prior to the hearing. The Board may rehear a matter on its own motion for the same reasons.

E. Decisions

1. Decisions by the Board shall be made not later than thirty (30) days from the time of the hearing.
2. The Board's final decision shall be set out in order stating the findings of fact and determinations of the Board signed by the Chair or person who acted as the Chair

at the hearing, which said order may be signed and served prior to the approval of the minutes of the Board. The minutes of the hearing shall include a summary of the evidence introduced.

When a variance is granted, the order shall state in detail any exceptional difficulty or unnecessary hardship upon which the approval was based and which the Board finds to exist. The decision may reverse or affirm, wholly or partly, or modify the order, requirements, decision, or determination appealed from.

When a special use permit is granted, the record shall state in detail any facts that support the findings required to be made before such permit is issued. The record shall state in detail what, if any, conditions and safeguards the Board imposes in connection with granting of a variance or a special use permit.

The order shall be filed in the minutes of the Board and in the office of the Clerk to the Board, and furnished to the applicant, the property owner (if different from the applicant) and any parties who request a copy of the order.

3. Unless otherwise specified in the order, any order or decision of the Board granting a special use permit or variance shall expire as set out in the ordinance of the Town.
4. The Zoning Administrator shall give written notice of the decision in the case to the appellant and/or the applicant and to every aggrieved party who has filed a written request for such notice with the Zoning Administrator or the Chair when the hearing is held. Such notice may be delivered by personal delivery, email, first class mail or certified mail, return receipt requested. A copy of the decision shall also be filed in the minutes of the Board and in the office of the Clerk to the Board and other place which may from time to time be specified in the zoning ordinance or required by the North Carolina General Statutes. The decision shall be a public record, available for inspection at all reasonable times.

~~A.—Types of Appeals. The Board shall hear and decide all appeals from and review any order, requirement, decision, or determination made by the Zoning Administrator. It shall also hear and decide all matters referred to it or on which the Zoning ordinance of the Town of Black Mountain requires it to pass. In deciding appeals, the Board may hear both those based on an allegedly improper or erroneous interpretation of the ordinance and those based on alleged hardship resulting from strict interpretation of the ordinance.~~

~~B.—Procedure for Filing Appeals. No appeal shall be heard by the Board unless notice thereof is filed within thirty (30) after the aggrieved party or parties receive final, binding, written notice of the order, requirement, decision, or determination by the Zoning Administrator. The applicant must file his application for a hearing with the Town Clerk, who shall act as clerk for the Board in receiving this notice. All applications shall be made on the form furnished for that purpose, and all information required thereon shall be complete before an appeal may be considered as having been filed.~~

~~C.—Hearings.~~

~~1.—Time.~~ After notice of appeal, requires for variance or request for conditional use permit is received, the Board chairman shall schedule a time for a hearing, which shall be at the next regular meeting which is to occur a sufficient amount of time after the filing of such notice of appeal to allow time for the proper notices to be given 10 to 25 days prior to the hearing.

~~2.—Notice of hearing of appeals.~~ The Board shall give notice of the hearing by mail to the owner and adjacent property owners 10 to 25 days prior to the hearing. The notice shall state the location of the building or lot, the general nature of the question involved in the appeal, and the time and place of the hearing. At the same time, the property must be prominently posted with a notice of the hearing on the site that is the subject of the hearing. A published hearing is not required by statute; however it can be required by the local ordinance).

~~3.—Notice of hearings of variance and conditional use applications.~~ Notice of hearings on applications for variances and conditional uses shall be the same as notice for hearings of appeals.

~~4.—Conduct of the Hearing.~~ Any party may appear in person or by attorney at the hearing. The order of business for each hearing shall be as follows: (1) the chairman, or such person as he shall direct, shall give a statement as to the function of the board in the type matter before the board and the procedure to be followed for this particular hearing, together with any other explanatory statements as the board may adopt as part of the hearing introduction; (b) the chairman, or such person as he shall direct, shall give a preliminary statement of the case; (c) the applicant shall present the evidence and arguments in support of his application; (d) person opposed to granting the application shall present the evidence and arguments against the application; (e) both sides shall be permitted to present rebuttals to opposing evidence and arguments; (f) the chairman shall summarize the evidence that has been presented, giving the parties opportunity to make objections or corrections. Witnesses may be called and factual evidence may be submitted, but the Board shall not be limited to consideration of such evidence as would be admissible in a court of law. The Board may view the premises before the hearing, but the facts indicated by such inspection shall be disclosed at the evidentiary hearing and made a part of the record. All witnesses before the Board shall be placed under oath, and the opposing party may cross-examine them. The Chairman may limit the time of presentations or statements of those who are not parties to the case being heard and are not witnesses called by the parties to the case.

~~5.—Rehearings.~~ An application for a rehearing may be made in the same manner as an application for an original hearing. Evidence in support of the application shall initially be limited to what is necessary to enable the Board to determine whether there has been a substantial change in the facts, evidence, or conditions in the case, or if significant and substantial new evidence has been discovered. The Board shall deny the application for rehearing if, from the record, it finds that there has been no substantial change in facts, evidence, or conditions, or newly discovered evidence. If the Board finds that change has

~~occurred, it shall thereupon treat the request in the same manner as any other application. A rehearing will not be granted for the presentation of additional evidence that was readily discoverable prior to the hearing. The Board may rehear a matter on its own motion for these same reasons.~~

~~*D. Decisions.*~~

~~1.—*Time.* Decisions by the Board shall be made not later than thirty (30) days form the time of the hearing.~~

~~2.—*Form.* The Board's final decision shall be set out in an order stating the findings of fact and determinations of the Board signed by the Chairperson or person who acted as the Chairperson at the hearing, which said order may be signed and served prior to the approval of the minutes of the board. The minutes of the hearing shall include a summary of the evidence introduced.~~

~~When a variance is granted, the order shall state in detail any exceptional difficulty or unnecessary hardship upon which the appeal was based and which the Board finds to exist. The decision may reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination appealed from.~~

~~When a conditional use or special use permit is granted, the record shall sate in detail any facts that support the findings required to be made before such permit is issued. The record shall state in detail what, if any, conditions and safeguards the Board imposes in connection with granting of a variance or a conditional use permit.~~

~~The order shall be filed in the minutes of the Board and in the office of the Town Clerk, and furnished to the parties as specified in Subsection 5.~~

~~3.—*Expiration of Permits.* Unless otherwise specified in the order, any order or decision of the Board granting a special use permit, conditional use permit or variance shall expire as set out in the ordinances of the Town.~~

~~4.—*Voting at Hearings.* A simple majority vote of the Board members shall be necessary to reverse any order, requirement, decision, or determination of the Zoning Administrator, to decide in favor of the applicant on any matter on which the Board is required by ordinance to pass. A concurring four-fifths vote of the Board members will be necessary to grant a variance from the ordinance provisions.~~

~~5.—*Notice and Public Record of Decisions.* The Zoning Administrator shall give written notice of the decision in the case to the appellant and/or the applicant and to every aggrieved party who has filed a written request for such notice with the Zoning Administrator or the Chairman of the Board when the hearing is held. Such notice may be delivered by personal delivery, email, first class mail or certified mail, return receipt requested. A copy of the decision shall also be filed in the minutes of the Board and in the office of the Town Clerk and other place which may from time to time be specified in the~~

~~zoning ordinance or required by the North Carolina General Statutes. The decision shall be a public record, available for inspection at all reasonable times.~~

VII. ~~AMENDMENTS~~ VOTING

All regular members may vote on any issues unless they have disqualified themselves for one or more of the reasons listed in section VIII. The concurring vote of four-fifths of the board shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. Vacant positions on the Board and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the Board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

~~These rules may, within the limits allowed by law, be amended at any time by an affirmative vote of not less than four (4) members of the Board, provided that such amendment be presented in writing at a regular or special meeting at which the vote is taken.~~

VIII. ~~EFFECTIVE DATE~~ CONFLICTS OF INTEREST

1. No Board member shall take part in the hearing consideration or determination of any case in which he/she is personally or financially interested.
2. No Board member shall have a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, or a close familial, business or other associational relationship with an affected person.
3. No Board member shall vote on any matter that decides an application or appeal unless he/she has attended the evidentiary hearing on that application or appeal.
4. No Board member or alternate member shall discuss any case with any parties thereto before the evidentiary hearing on that case. Members may receive and/or seek information from the clerk before the hearing pertaining to the hearing date, time and place of the hearing, and materials submitted with the application or appeal.
5. Members of the Board shall not express individual opinions on the proper judgement of any case with any parties thereto or among themselves other than during deliberations at the hearing before the case is determined. Violation of this rule shall be cause for dismissal from the Board.

~~The rules shall become effective upon their adoption. The Rules of Procedures were amended and duly adopted by the Zoning Board of Adjustment for the Town of Black Mountain, this the 21st day of November, 2013.~~

IX. AMENDMENTS

These rules may, within the limits allowed by law, be amended at any time by an affirmative vote of not less than four (4) members of the Board, provided that such amendment be presented in writing at a regular or special call meeting at which the vote is taken.

X. EFFECTIVE DATE

The rules shall become effective upon their adoption.

, Chair

ATTEST:

Jennifer Tipton, Clerk to Board of Adjustment

An Evidentiary Hearing, also known as a Quasi-Judicial Hearing, occurs when an agenda item has been advertised and noticed according to the law; however, the Board of Adjustment acts like a court of law. During an Evidentiary Hearing, the Board of Adjustment receives **ONLY** sworn testimony and other credible evidence. In addition, the Board of Adjustment must make Findings of Fact based upon the evidence presented. Citizens may give testimony in an Evidentiary Hearing only **AFTER** they have taken an oath.

Because the Board of Adjustment functions in a different capacity during an Evidentiary Hearing, it uses a procedure form. Below is a summary of the procedures for an Evidentiary Hearing.

Call to Order:

The Chair will call the hearing to order.

Approval of the Agenda:

The agenda shall be approved [or amended if necessary].

Approval of the Minutes:

Minutes from the prior meeting shall be approved.

Old Business/New Business:

The Chairman shall announce the business at hand. Each applicant will be handled separately, one after the other.

Outline of Hearing Conduct/Rules of Procedure:

The Chair reads the opening statement which explains what types of cases the Board hears and that the Board essentially acts as a court of law. There is a burden upon the applicant to meet the criteria found in the Town of Black Mountain Land Use Code. Anyone opposed to the application must put on evidence of a similar kind showing the criteria has not been met.

Testimony must be given under oath. All testimony and evidence provided to the Board must be competent, material, and substantial. Pursuant to North Carolina General Statutes, competent evidence does not include opinion testimony of lay witnesses on certain matters. Hearsay evidence will not be admitted. The Board will apply the criteria contained in the Town of Black Mountain Land Use Code and make its decision based on the evidence and testimony presented at the hearing. The role of the Town Attorney during the hearing is to monitor all evidence and testimony to ensure that it complies with North Carolina Law, The Town's Land Use Code, the Rules of Procedure, and all other applicable documents.

Oaths:

Oaths shall be administered to all persons wishing to present testimonies, including staff.

Conflict of Interest/Bias/Ex Parte Communications:

The Chair will ask if any member of the Board has any of the following possible disqualifications from hearing or voting on this case. Impermissible conflicts include, but are not limited to: a fixed opinion prior to hearing the matter that is not susceptible to change, an undisclosed ex parte communication, a financial interest in the outcome of the matter, or a close familial, business, or other associational relationship with an affected person or entity. If an objection is raised to a member's participation and that member does not recuse himself/herself, the remaining members shall, by majority vote, rule on the objection. The member may excuse himself/herself because of the potential conflict, or may ask the Chair to make a determination. The Chair shall announce any recusals prior to the hearing.

Staff Report:

The Zoning Administrator will give a preliminary statement describing the case and provide any staff findings.

Applicant Testimony:

The applicant shall be called to present his/her case. If the applicant or a representative is not present to give testimony, the Chair shall call for a vote of the members present to continue the hearing for 30 days. The applicant shall be notified of such action. The Chair, with the advice of the Town Attorney, shall be responsible for keeping testimony relevant and factual.

Members and other sworn witnesses can cross examine the witness. Each questioner will get one opportunity to ask questions unless based on new evidence or questions asked since that person had an opportunity to ask.

Opposition Testimony:

Those speaking in opposition to the application shall be called upon to present their case. The Town Attorney shall be responsible for keeping testimony relevant and factual.

Members and other sworn witnesses can cross examine opposing testimony. Each questioner will get one opportunity to ask questions unless based on new evidence or questions asked since that person had an opportunity to ask.

Applicant Rebuttal:

The applicant and/or those in support of the application shall be provided an opportunity to rebut testimony provided by the opposition. The Board may also ask questions of the applicant at this time.

Opposition Rebuttal:

Those in opposition to the application shall be provided an opportunity to rebut testimony provided by the applicant. The Board may also ask questions of the opposition at this time.

Hearing Summary:

Before voting to close the hearing, the Chair and the Clerk to the Board will summarize the evidence that has been presented, giving the parties opportunity to make corrections or objections. Also, staff should designate any conditions that the Board should consider.

Deliberation:

The Board will take a recess to deliberate the application. All deliberates are open to the public and additional testimony is NOT taken during deliberations. Once called into deliberation, no person may address the Board and no questions may be asked by the Board to the public or staff. During this time, the Board may find they have more questions for the application, the opposition or staff.

Close the Hearing:

After the Board has asked all questions of the application, opposition and staff, the Board will vote to close the evidentiary hearing. At this time, no more evidence or testimony will be gathered or taken and no more questions may be asked.

Action – Findings of Fact:

Once the deliberations have taken place and the evidentiary hearing has been closed, the board shall discuss each finding of fact in turn and a vote shall be made on each selecting if the findings of fact are yes/true or no/false.

Special use permits and appeals require a majority vote of members present for approval. Variances require a 4/5th majority vote of members present for approval.

Action – Application Approval/Denial

Once the findings of fact have been decided and based on the results of the evaluation and vote on those findings of fact, the application will either be approved for denied. Failure of any single criteria to achieve majority approval by the Board shall necessitate a decision against the application. A majority vote for approval for all criteria shall necessitate a decision in favor of the application.

Reports and Other Business:

Staff shall report any other business or information to the Board that they may find relevant about upcoming meetings or procedures.

Adjourn:

The Board shall make a motion to adjourn the meeting.

For any information regarding Evidentiary Hearings, please contact the Planning and Development Department at 828-419-9300, option 4. Agendas will be added to our webpage at www.townofblackmountain.org one week before the hearing(s).