

**TOWN OF BLACK MOUNTAIN
BOARD OF ADJUSTMENT**

The Black Mountain Board of Adjustment held its regular meeting on Thursday, September 16, 2021, at 6:00 p.m. electronically via Zoom.

I. CALL TO ORDER

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

John DeWitt, Chair
Jillian Ballard, Vice Chair
Janet McKimpson
Patrick Prosser
Dave Barley, Alternate

Absent:

Greg Feightner

Staff:

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

Others:

Joshua Pettler	Erin Marceno	Mark Titus
Hannah Titus	Shawn Slome	

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

The agenda was approved by consensus.

III. ADOPTION OF MINUTES

The minutes of August 19, 2021, were approved as written by consensus.

IV. OLD BUSINESS

None.

V. NEW BUSINESS

1. Variance Request for 99999 Crocket Ridge Road

Chair John DeWitt read the opening statement and then called for the swearing in of those parties wishing to testify. Patrick Prosser reported that he drove by the property seeking the variance. Jake Hair presented the staff report for the variance request. The variance request is to decrease both the front and rear property lines from thirty feet to twenty-five feet. Currently, the property is zoned CR-1 which requires thirty feet for both front and rear setbacks. The property is not designated steep slope so the property cannot receive the steep slope setback reduction. The surrounding properties are residential and are also zoned CR-1. The property is .26 acres and the slope is 16.4%. Staff has determined that the lot meets all dimensional requirements of the current zoning ordinance.

Joshua Pettler, 13 ½ Eagle Street, Ste. 1, is the architect who has been working with Mr. and Mrs. Titus on their project for about a year. Mr. Pettler said that with the lot size and setback

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requirements, there is approximately twenty-three hundred square feet of buildable area. The property is unique in that the lot has frontage on both sides which prohibits features of a house such as a garage, outdoor area, length of eaves, patios, and driveway areas. The driveway does have a slope to be able to access the property. All of these issues present a challenge for the type of house that Mr. and Mrs. Titus would like to build and what is expected of them to build in the Settings development. A five-foot increase would give about another seven hundred square feet of room to allow for some of the features that are wanted. The CR-1 zoning is for acre lots but if looking at the dimensions and acreage it does not meet the setback requirements but if the lot were an acre, there would be no need for a variance. The Settings have agreed to the variance through the DRB review and there is an email of the DRB allowing leeway of five feet on the front and the back. Janet McKimpson asked if the Settings DRB had already approved the five-foot variance and Mr. Pettler said that the DRB cannot approve the variance until the Town of Black Mountain approves the variance. Chair John DeWitt said that the DRB and the Board of Adjustment are two independent bodies who have to make a decision based on their own requirements and while it is good information to have the email from the DRB, it should not sway the decision of the Board of Adjustment one way or the other. Mr. Pettler asked that the board consider the request and that considering the conditions of the property, the intention is to build the type of home that is fitting for the community and fits the requirements and would be hard to do with the thirty-foot required setbacks.

Jillian Ballard said that she was confused by the language that was being used in that would it be possible for the house to meet the Settings requirements without the variance. Mr. Pettler said that he cannot say that it would be impossible but when considering the square footage requirements, which he believes is one thousand square feet on the main level, trying to fit that square footage requirement as well as the features normally found on a single-family residence will be very tight with the setbacks. Ms. Ballard asked if patios and outdoor spaces were requirements and Mr. Pettler said that they are features that would be expected but cannot say for sure that they would be required but that the process is subjective and when they are approving the ability to build a home they are looking at certain features and architectural elements that some of these things will provide to meet those requirements. Ms. Ballard asked if the written requirements for the Settings could be met without the setback variance and Mr. Pettler responded that the requirement could possibly be met. Janet McKimpson asked if the Settings DRB could override the Board of Adjustment decision and Town Attorney Ron Sneed explained that no, they could not override the Board of Adjustment decision because they are applying a different set of requirements than the Town. Patrick Prosser said that in driving around the Settings and in the neighborhood, it does not appear to him that there is an actual hardship but a desire to have a certain design built but it wouldn't be a hardship if the design could be adjusted to fit within the boundaries that are required. Ms. Ballard said that was her thinking as well and it does appear that there are desires going on and she is having a hard time understanding where the hardship lies if a house can be built on the lot that is approvable for the Settings, then what exactly is the issue. Ms. McKimpson and Mr. Prosser both agreed with Ms. Ballard and Ms. McKimpson said she didn't get what the hardship would be if the variance were not granted. Mr. Pettler said that he appreciated the comments and that the Settings requirements aren't necessarily prohibit anything but the lot is a smaller lot within the Settings and the hardship is really because they have two roads so they have two frontage setbacks to manage and that if they only had one road then they might not need a variance because they would have room in the back to push the house further back. Mr. Pettler said this is not a square piece of property, rather it is

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sort of triangular shaped so they are penned in on the front, which is the only approachable side from Crockett Ridge and there is a steep portion of the property in the rear so the buildable area is very confined and unique to the Settings in this case. Mr. Pettler said that they do require one thousand square feet of living area for a multi-story home and also require a parking area for two cars, which will be a garage that will approximately six hundred square feet so that leaves about seven or eight hundred square feet to add everything else and they will require a patio or a porch within that setback and they will also require a driveway that has a certain slope and in this case takes up room that could have been used for something else. Eaves will also be required within those setbacks and outdoor space, while not required, would be nice to have and would add to the character and uniqueness of the home. The southwestern corner has acute angles that can't be built into because it is not a square property where you can take up the full volume of the buildable area. There are significant features of this property which make it very difficult to build and all of these things combined make it a challenging lot. There is consensus with the Settings in understanding the challenges of this lot and they are willing to offer the ten feet of extra room. Mr. Prosser said he understands the issues of the desired design and could almost consider in the rear setback because it is steep and cannot be accessed and could see granting that variance but not in the front and he just doesn't understand the hardship. The board went into recess to discuss the facts presented. Ms. McKimpson said that she doesn't see the hardship and suggested that maybe they go through the process with the Settings and then come back to the board. Ms. Ballard said that it sounded like they had already gone through that process and the Settings would okay with it if the Town was okay with it. Mr. Prosser said that while that had been said no documentation was provided to confirm any communication from the DRB and Chair DeWitt said that it was hearsay. Chair DeWitt said he also agreed with everyone and that the design should fit within the land and it doesn't make a hardship. Ms. Ballard said she doesn't think compromising on giving them a smaller variance or just the front or the back because there still isn't a hardship and they can't arbitrarily change the rules. Patrick Prosser made a motion to close the public hearing. The motion was approved by consensus with a vote of 5-0.

The board made the following findings of fact:

1. That unnecessary hardships would not result from the strict application of the Ordinance in that the design of the home can be altered to fit the required setbacks as certain wanted design elements are not required by the Settings requirements.

Patrick Prosser made a motion to deny the variance request for 99999 Crockett Ridge Road. The motion was seconded by Jillian Ballard and approved by a vote of 5-0.

2. Board of Adjustment Brochure

The board thanked Jennifer Tipton for her work on the brochure. The brochure provides information about the Board of Adjustment and will be posted on the website as well as given to applicants when they apply for variances, special use permits and appeals.

3. Review of Rules of Procedure

Jennifer Tipton explained that the rules of procedure have not been updated in quite some time and with the changes from 160D, staff felt it was time to update the rules of procedure. The updates include changes to the statute numbers as well as clarifying roles of officers. Town Attorney Ron Sneed also incorporated a few changes that included adding some additional duties to the role of Chair. It was decided to go ahead and elect a secretary so that in the absence of the Chair and Vice-Chair, the Secretary can run the meeting. John DeWitt made a motion to

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nominate Patrick Prosser for Secretary. The motion was seconded by Janet McKimpson and approved by a vote of 5-0.

John DeWitt made a motion to adopt the revised rules of procedures as presented. The motion was seconded by Patrick Prosser and approved by a vote of 5-0.

4. Review of Order of Operations

Jennifer Tipton explained that the order of operations is used to make it easier to follow along with the meeting. The order of operations details out the process of the quasi-judicial hearing as well as conducting other business. The order of operations has been extremely helpful during the electronic meetings. The order of operations will be posted on the website as well as given to applicants when they apply for variances, special use permits and appeals.

VI. COMMUNICATION FROM BOARD OF ADJUSTMENT

None.

VII. COMMUNICATION FROM STAFF

None.

VIII. ADJOURNMENT

Jillian Ballard made a motion to adjourn the meeting at 6:49 p.m. The motion was approved by consensus with a vote of 5-0.

Prepared by:

John DeWitt, Chair

Jennifer Tipton, Senior Admin

Patrick Prosser, Secretary

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