

**TOWN OF BLACK MOUNTAIN
BOARD OF ADJUSTMENT**

The Black Mountain Board of Adjustment held its regular meeting on Thursday, November 17, 2022, 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:

Lauren Dodgin, Chair
Larry Pearlman, Vice Chair
Ben Cooper
Chloe Riddle (arrived late)

Absent:

Andy Homrich, Secretary

Staff:

Jennifer Tipton, Senior Admin
Russell Cate, Planner I
Ron Sneed, Town Attorney

The meeting was called to order at 6:05 p.m. and duly constituted and opened for business with a quorum of three (3) regular members.

II. ADOPTION OF AGENDA

Larry Pearlman made a motion to adopt the agenda as presented. The motion was seconded by Ben Cooper and approved by consensus.

III. ADOPTION OF MINUTES

Larry Pearlman made a motion to approve the minutes of October 20, 2022, as written. The motion was seconded by Larry Pearlman and approved by consensus.

IV. OLD BUSINESS

None.

V. NEW BUSINESS

Larry Pearlman noted that he goes to church and sings in the choir with the applicant and knows her husband. All persons wishing to testify were sworn in.

1. Variance Request for 405 S Oconeechee Avenue

Larry Pearlman made a motion to open the evidentiary hearing at 6:37 p.m. The motion was seconded by Ben Cooper and approved by a vote of 4-0.

Russell Cate explained that the variance request is to reduce the side setback on the south side of the parcel from ten feet to five feet in order to allow an accessory structure to be converted to a secondary dwelling. The conversion would add square footage to the north side of the structure, creating a secondary dwelling of 240 square feet and would also include a deck with a total area of 192 square feet. The parcel is zoned UR-8 and secondary dwellings are a permitted use with additional requirements. The parcel is .27 acres and the average slope is 8.62%. All surrounding properties are also zoned UR-8 and are all single-family residences. Staff's analysis are that the

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existing structures are in conformance with the zoning district requirements but the setback requirements for a secondary dwelling are the reason for the variance request. The primary structure was constructed in 1986 and the accessory structure was constructed in 2018. The primary residence is 980 square feet.

Susan Cannon, 405 S. Oconeechee Avenue, submitted a survey, a picture of her and her husband and his state of dementia, and photographs of the property line laid out with boards to show the area of variance request. Mrs. Cannon explained that she is requesting the variance to convert an accessory structure to a secondary dwelling to allow room for family to stay. The accessory structure was built as a studio and workshop and her husband is no longer able to use the space due to dementia and mobility issues. Mrs. Cannon has two sons with families and due to the smallness of the house, it is almost impossible for the families to stay in the house. The creation of the secondary dwelling would allow room for the families to stay as Mr. Cannon's condition deteriorates. Mrs. Cannon was aware of the odd property line when the property was purchased, but the thought was that the accessory structure would be an art studio.

Larry Pearlman asked if they have looked at alternatives and Mrs. Cannon said that it would be prohibitive to add on to the house and after consulting with contractors, the most efficient thing would be to convert the accessory dwelling. Ben Cooper asked about the foundation of the accessory structure and Mrs. Cannon said she knows that it is a permanent foundation but is not sure what material it is made of. Mrs. Cannon said there are timber posts, and they are in the ground. Chloe Riddle asked if there would be an expansion. Mrs. Cannon said that they would expand the structure on the north side. Mrs. Cannon said that there would be a privacy screening along the door and steps.

Mario Salamone, 408 S. Oconeechee Avenue, is across the street from the applicant and Mr. Salamone is a contractor and is here as a neighbor and is grateful to live next to wonderful people and know their situation and the community, whatever could help her garners his full support.

Jason Corrado, said he does not have an issue with this particular variance but does it set a precedent for other accessory structures that are five feet from the property line to convert to a secondary dwelling. Town Attorney Ron Sneed said that variances are heard on a case-by-case basis. Mr. Corrado said that his other concern is density and building houses on top of houses and potentially destroying the character of the neighborhood.

Mrs. Cannon thanked both neighbors for speaking and noted that they raised good concerns and talking about health and well-being and would allow more room as the existing house is very small. They did not tear the house down and improved the existing house and made it what they could afford and the only thing it couldn't accommodate more people, particularly with the medical equipment that is in the house. Mrs. Cannon feels that the structure would not alter the character of the neighborhood.

Larry Pearlman made a motion to go into recess at 7:01 p.m. The motion was approved by a vote of 4-0.

The board discussed unnecessary hardships and talked about the weird property line and that if the inset were not there, the structure would be in compliance. Ben Cooper said that he thinks the deck is not in compliance and is within the setback but would defer to staff to answer if that is the case or not. Lauren Dodgin said that the strict application of the ordinance is a hindrance because of the weird property line and that if this were a square lot, the applicant would not be requesting a variance.

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Lauren Dodgin made a motion to come out of recess at 7:12 p.m. The motion was approved by a vote of 4-0.

The board found the following:

1. There is an unnecessary hardship because if the setback requirements are strictly enforced it will prohibit Mrs. Cannon from converting a legal accessory structure into a second residential structure because of an irregularity of the common property line with the adjoining property owner.
2. The hardship does result from conditions that are peculiar to the property because the irregular common lot line with the adjoining property owner has been relocated at some point in the past to accommodate setback issues of the adjoining property.
3. The hardship is not a result of actions taken by the applicant or property owner as the change in the common lot line occurred prior to her purchase of the property.
4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved, because the variance will allow a use which is available to all property owners in the neighborhood and will create no hazardous conditions.

Ben Cooper made a motion to grant the variance with the condition that no elevated structures be allowed within the newly created setback. The motion was seconded by Larry Pearlman and approved by a vote of 4-0.

Larry Pearlman made a motion to close the evidentiary hearing at 7:21 p.m. The motion was seconded by Ben Cooper and approved by a vote of 4-0.

VI. COMMUNICATION FROM BOARD OF ADJUSTMENT

None.

VII. COMMUNICATION FROM STAFF

None.

VIII. ADJOURNMENT

Larry Pearlman made a motion to adjourn at 7:23 p.m. The motion was approved by a vote of 4-0.

Prepared by:

Lauren Dodgin, Chair

Jennifer Tipton, Senior Admin

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