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 December 15, 2022
Date: December 8, 2022

The **Town of Black Mountain Board of Adjustment** will meet on **Thursday, December 15, 2022, at 6:00 p.m.** in Town Hall at 160 Midland Avenue.

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

1. The proposed agenda;

2. Draft minutes from November 17, 2022; and

3. Variance Order for 405 S Oconeechee Avenue.

Please let Jennifer Tipton know if you are **unable** to attend this meeting.
jennifer.tipton@tobm.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@tobm.org.

CC: Jessica Trotman, Planning Director
Russell Cate, Planner 1/Zoning Administrator
Ron Sneed, Town Attorney

PUBLIC NOTICE
AVISO PÚBLICO

BLACK MOUNTAIN BOARD OF ADJUSTMENT

REGULAR MEETING
REUNIÓN ORDINARIA

Thursday, December 15, 2022, at 6:00 p.m.
Jueves 15 de diciembre de 2022, a las 6:00 p.m.

The Black Mountain Board of Adjustment will meet for their monthly meeting on **Thursday, December 15, 2022, at 6:00 p.m**. at Town Hall, 160 Midland Avenue, Black Mountain, N.C.
La Junta de Ajuste de Black Mountain se reunirá para su reunión mensual **el jueves 15 de diciembre de 2022 a las 6:00 p.m**. en Town Hall, 160 Midland Avenue, Black Mountain, N.C.

The meeting is open to the public.
La reunión está abierta al público.

_____
Jennifer Tipton
Senior Admin

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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) 419-9371 o por correo electrónico a Jennifer.tipton@tobm.org.

Posted to the Town Bulletin Board 12/01/2022
www.townofblackmountain.org

Board of Adjustment Regular Meeting
December 15, 2022

PROPOSED AGENDA

I. CALL TO ORDER
- **Welcome**
- **Determination of Quorom**

II. ADOPTION OF AGENDA
- **Motion:** To adopt the agenda as presented [or as amended]

III. ADOPTION OF MINUTES
- **Motion:** To adopt the minutes of November 17, 2022, as written [or as amended]

IV. OLD BUSINESS

V. NEW BUSINESS
- Approval of Order for 405 S. Oconeechee Avenue Variance Request

VI. COMMUNICATION FROM BOARD OF ADJUSTMENT

VII. COMMUNICATION FROM STAFF

VIII. ADJOURNMENT

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

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.

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

TOWN OF BLACK MOUNTAIN
COUNTY OF BUNCOMBE

BEFORE THE BLACK MOUNTAIN
BOARD OF ADJUSTMENT

In the Matter of the Application of	)	
Susan G. Cannon	)	
for a Variance for Property at	)	
405 S. Oconeechee Avenue	)	ORDER
	)	

THIS CAUSE, coming on before the Board of Adjustment for the Town of Black Mountain on November 17, 2022, upon the application of Susan G. Cannon, for a variance to reduce the side setback for a second residential structure to 5 feet to allow the conversion of an accessory structure into a secondary residential use on the property located at 405 S. Oconeechee Avenue, Black Mountain, North Carolina.

Susan G. Cannon appeared, pro se.

Jennifer Tipton, Senior Admin, and Russell Cate, Planner, appeared for the Town staff and Ronald E. Sneed attended as counsel to the board.

The Board of Adjustment, having heard and considered the testimony of town staff, the Applicant, and residents from the neighborhood around the subject property, and having considered all the evidence presented by the town staff and the Applicant, and the statements and arguments for the Applicant, makes the following

FINDINGS OF FACT

1. The Board of Adjustment has jurisdiction over this matter pursuant to Section 1.7.3 of the Land Use Code.

2. Proper notice of this meeting and hearing of the Board of Adjustment was provided as required by the Town ordinances and the state law.

3. Applicant and her husband, Jerry Cannon, are owners of property located at 405 S. Oconeechee Avenue in Black Mountain, having the current PIN number of 0609-97-9200-00000 as shown on the Buncombe County tax maps.

4. The property is zoned UR-8, and in that zoning district building side setback is ten feet for residential structures and five feet for accessory buildings.

5. The parcel of property at 405 S. Oconeechee as a modest home with less than 1,000 feet of heated living space and an accessory building. The accessory building is set back five feet from the side property line as required.

6. The husband of the Applicant has become disabled and is unable to make use of the accessory building as a workshop.

7. The Applicant desires to add on to the accessory building and convert it into a residential structure for use by guests and visiting family members, as her home is too small to accommodate guests, and for possible use by caregivers for Mr. Cannon should that become necessary.

8. To make the accessory structure large enough to be usable living space, an addition is needed to enlarge it to a total living space of approximately 240 square feet. The proposed addition is not on the side where the setback variance is requested, so the non-conformity of the structure will not be enlarged by the addition.

9. The adjoining lot does not have a straight property line, and at the point where the Applicant's accessory structure is located, the adjoining lot was relocated at some point in the past to create a "bump out" in the adjoining lot line, which lot line change appears to have been done to cure a setback violation on the adjoining lot.

10. If the adjoining lot line did not have the "bump out" the accessory building on the Applicant's property could be used as a residential structure with very little or no setback variance required.

11. From photographs provided by Applicant and put into evidence, it appears that there is a walkway that is elevated for at least a part of its distance alongside of the existing accessory structure on the end of the building along the side lot line.

12. Second residential structures are allowed in the UR-8 zoning district, allowed to size and setback restrictions, and the proposed structure will conform to the size requirement.

13. To be granted a variance, the Applicant is required to prove all the following:

> (1) 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.
>
> (2) 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.
>
> (3) 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.
>
> (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. (N.C.G.S. Section 160D-705; Section 1.7.3.E. of the LUC).

15. The setback requirements of the ordinance, if strictly enforced, will be an unnecessary hardship for the Applicant, as it will prohibit her from converting an legal accessory structure into a second residential structure on her property because of the irregularity of the common property line with an adjoining property.

16. The hardship results from conditions that are peculiar to the property, as the irregularity of the common lot line with the adjoining property has been relocated at some point in the past to accommodate setback problems of the adjoining property.

17. The hardship did not result from actions taken by the applicant or the property owner, as the change in the common lot line occurred prior to her purchase of her property.

18. 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, as the variance, if granted, will allow a use which is available to all property owners in the neighborhood and will create no hazardous conditions.

19. The requested variance will be more consistent with the spirit, purpose and intent of the ordinance if it is subject to the condition no elevated deck, stoop or walkways are built, or left standing, on the side of the structure along the side lot line.

BASED ON THE FOREGOING FINDINGS OF FACT, this Board by a vote of 4 to 0, concludes that the Applicants should be granted a variance to reduce the side setback for the structure on the south boundary of the property to allow the conversion of the structure into a residential structure as long as the structure is not enlarged at the end closest to the side lot line and if any elevated walkway or stoop on the side nearest the lot line is removed and no new elevated walkway or stoop built there.

IT IS NOW, THEREFORE, ORDERED, that the Applicants are granted a variance reducing the side setback for the accessory structure on the south side of the lot at 405 S. Oconeechee Avenue to 5 feet, subject to the conditions that the structure is not enlarged at the end closest to the side lot line and if any elevated walkway or stoop on the side nearest the lot line is removed and no new elevated walkway or stoop built there

This the _____ day of _____, 2022.

_____
LAUREN DODGIN, Chairperson

If you are dissatisfied with the decision of this Board, an appeal may be taken to the Superior Court of Buncombe County within 30 days after the date this order is served on you. See Section 1.7.5 of the Land Use Code., Appeals from Decisions of the Board of Adjustment, in the Town of Black Mountain Code of Ordinances.