



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 Planning Board
From: Jennifer Tipton, Zoning Administrator
Re: Agenda Packet for February 25, 2019
Date: February 15, 2019

The **Town of Black Mountain Planning Board** will meet on **Monday, February 25, 2019 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 January 28, 2019;
3. Right-of-way closing petition process information; and
4. Proposed text amendments for bed and breakfast homes and inns.

Please let Jennifer Tipton know if you are **unable** to attend this meeting.
jennifer.tipton@townofblackmountain.org or (828) 419-9373.

The Town of Black Mountain is committed to providing accessible facilities, programs and services for all people in compliance with the American with Disabilities Act. Should you need assistance or a particular accommodation for this meeting, please inform Jennifer Tipton at (828) 419-9373 or by email at jennifer.tipton@townofblackmountain.org.

CC: Jessica Trotman, Planning Director
Ron Sneed, Town Attorney



PUBLIC NOTICE

BLACK MOUNTAIN PLANNING BOARD

REGULAR MEETING

Monday, February 25, 2019 at 6:00 p.m.

The Black Mountain Planning Board will meet for their monthly meeting on **Monday, February 25, 2019 at 6:00 p.m.** at Town Hall, 160 Midland Avenue, Black Mountain, N.C. The purpose of this meeting is to consider a right-of-way closure petition for a portion of Campbell Street and to consider a proposed text amendment to bed and breakfast home and inn definitions.

The meeting is open to the public.

Jennifer Tipton
Zoning Administrator

The Town of Black Mountain is committed to providing accessible facilities, programs and services for all people in compliance with the Americans with Disabilities Act (ADA). Should you need assistance or a particular accommodation for this meeting please contact, Jennifer Tipton at (828) 669-2030 or by email at Jennifer.tipton@townofblackmountain.org

Posted to the Town Bulletin Board 02/08/19

www.townofblackmountain.org



Planning Board Regular Meeting

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 January 28, 2019 as written [or as amended]

IV. OLD BUSINESS

- Right-of-Way Closure Petition for Portion of Campbell Street

V. NEW BUSINESS

- Proposed Text Amendments for Bed and Breakfast Homes and Inns

VI. COMMUNICATION FROM PLANNING BOARD

VII. COMMUNICATION FROM STAFF

VII. ADJOURNMENT

Planning Board Regular Meeting
January 28, 2019

The Black Mountain Planning Board held its regular meeting on Monday, January 28, 2019 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:

Peter Vazquez, Chair
Jennifer Willet
Lisa Milton
Jesse Gardner
Michael Raines
Scott Reed

Absent:

Pam Norton, Vice Chair

Staff:

Jennifer Tipton, Zoning Administrator
Jessica Trotman, Planning Director

The meeting was called to order at 6:02 p.m. and duly constituted and opened for business with a quorum of six (6) regular members.

II. ADOPTION OF AGENDA

Lisa Milton made a motion to adopt the agenda as presented. The motion was approved by consensus with a vote of 6-0.

III. ADOPTION OF MINUTES

Michael Raines made a motion to adopt the minutes of November 26, 2018 as written. The motion was approved by consensus with a vote of 6-0.

IV. OLD BUSINESS

No old business.

V. NEW BUSINESS

1. Right-of-Way Closure Request for a Portion of Campbell Street

Jennifer Tipton reported that a small portion of Campbell Street was petitioned to be closed. The portion is approximately one hundred and twenty feet in length and forty feet wide. The portion of the right-of-way is not identified on any of the area plans, is not a hazard, is not part of a drainage or stormwater system and does not have any utilities located in the right-of-way. Ms. Tipton and Jessica Trotman explained to the board that they could make a complimentary application to close the rest of the right-of-way and it would be a separate process with separate notifications. The board asked if there were a cleaner way to these applications so that they could be heard at the same time rather than being staggered. Ms. Trotman said she will research if there are any ways to make the process cleaner and tighter. Peter Vazquez made a motion to table the request until at least the next meeting while staff looks at cleaner processes. The motion was seconded by Michael Raines and approved by a vote of 6-0.

2. Proposed Text Amendment for Duplex Definition

Jennifer Tipton presented a couple of alternative definitions of a duplex. The reason for the proposed amendment is to ensure that a duplex is one single structure and how the structure can be connected and to correct the ambiguity that is in the current definition. Ms. Tipton read an email from Doug Brock asking that the definition retain that a duplex can be subdivided as a townhome or condominium unit. Peter Vazquez proposed the following definition:

Duplex or Two Family Residence: A building on a single lot comprising of a single structure, either by original design and construction or through modification that contains two separate dwelling units, each of which is intended to be occupied as a separate residence for one family. A duplex or two family residence may be held in single ownership or may be subdivided as an individual townhome or condominium unit. Each dwelling unit shall be totally separated from one another by wall and floor assemblies having not less than 1-hour Fire-Resistance ratings in accordance with the North Carolina Residential Building Code. Fire-resistance rater floor/ceiling and wall assemblies shall extend to and be tight against the exterior walls; wall assemblies shall extend from the foundation to the underside of the roof sheathing. Stairways intended to serve both dwelling units, for either access or egress must not require or permit passage through any units' 1-hour fire-resistive assembly or any adjoining dwelling unit.

Ms. Trotman reported that there was an instance where someone built two dwellings and attached them with a covered breezeway and called it a duplex and because of the ambiguity in the current definition, case law says that when there is ambiguity you side with the property owner for free use of the property. Staff wants to ensure that there is a more comprehensive definition so this instance doesn't happen again. The discussion then turned to how to divide a duplex and what amount of acreage goes with each unit. Ms. Trotman suggested creating a visual aid so that everyone can look at the same thing. Peter Vazquez suggested tabling the proposed amendment until the next meeting to allow staff to create a visual aid and to gather any other information that might be helpful.

VI. COMMUNICATION FROM PLANNING BOARD

Lisa Milton asked that page numbers be added to the pages in the packets.

VII. COMMUNICATION FROM STAFF

Jessica Trotman reported that the Board of Aldermen had continued the public hearing for the text amendments to the right-of-way closing procedures to gather comments from the Planning Board about noticing requirements. The statute is clear on who is to be notified so rather than saying everyone within two hundred feet shall be notified it will say may be notified. Ms. Trotman said that she would be glad to take any comments and report them back to the Board of Aldermen. Lisa Milton said that there are instances where broader notification should be required and sees it as a cost of operation of the town.

Jessica Trotman presented a one-page project sheet for the Blue Ridge Road Small Area Plan that shows the project area and describes what a small area plan is. Ms. Trotman reported that plans are underway for a joint session with the Board of Aldermen and the consultants to begin the process and from there then the community meetings will be planned. All property owners will be notified and the consultant is working on several survey methods. The project sheet will be displayed in different areas and will be posted on the website and staff will let the board know when the joint meeting has been scheduled.

Planning Board Regular Meeting
January 28, 2019

VIII. ADJOURNMENT

Jesse Gardner made a motion to adjourn at 7:12 p.m. The motion was approved by consensus with a vote of 6-0.

Prepared by:

Peter Vazquez, Chair

Jennifer Tipton, Zoning Administrator

DRAFT



Town of Black Mountain
Building, Planning and Zoning

160 Midland Avenue ♦ Black Mountain ♦ North Carolina ♦ 28711
Phone: 828-419-9300 ♦ Fax: 828-669-2030 ♦ TDD: 1-800-735-2962

Date: February 25, 2019

To: Black Mountain Planning Board

From: Jennifer Tipton, Zoning Administrator

RE: Portion of Campbell Street Right-of-Way Closure Request

Please find pertinent information attached.

Pages 7 – 11:	Staff Memo
Page 12:	Petition
Page 13:	Map (original plat)
Page 14:	Map (Scala survey)
Pages 15:	Notice to Property Owners
Page 16:	Letter from Fire Department
Page 17:	GIS Map
Page 18-20:	Resolution R-86-9
Page 21:	Map (identifying 1986 closure and petitioned closure)

Summary

Josh and Katharine Scala, Eleanor McPhail and Thomas and Lillian Logan have filed a petition (page 12) to close a portion of Campbell Street that abuts Central Avenue. The portion that is being requested is approximately 120.15' in length. The Fire Department does not foresee any issues with the closing of this portion of Campbell Street.

All owners abutting Campbell Street (from Central Avenue south) have been notified of the petitioned closure and a copy of the notice is provided in this packet.

A portion of Campbell Street was closed in 1986 and this is referenced in Resolution R-86-9 along with a map showing the 1986 closure and the petitioned closure.

Lot #8586 (labeled as lot 2 on GIS map) has a 20' deeded driveway easement to Craggy Street. This easement is recorded in Plat Book 87 at Page 28.

Lot #9222 (labeled as Lot 1 on GIS map) has access from Washington Avenue to W. College Street.

The Planning Board may choose to make a complimentary petition for the remaining approximate 300' of Campbell Street. If the board chooses to make this complimentary petition, it will be a separate process.

The board may ask the original petitioner if they would not mind waiting an additional thirty days to sync up the public hearings but it cannot be required.

Definitions

The land use code defines the following terms:

Abut: Having a common boundary or lot line not separated by a street, alley, railroad or other right-of-way (distinguished from adjacent which can include abutting property or those across a street.)

Adjacent: Either abutting or being directly across a street.

Alley: A service roadway providing a secondary means of public access to abutting property and not intended for general traffic circulation.

Right-of-way: 1) A The strip of land acquired by purchase, reservation dedication, forced dedication, prescription, or condemnation and intended to be occupied by a roadway, greenway, sidewalk, railroad, utility, storm sewer, or other uses; and 2) the right of one to pass over the property of another.

3.6.2 Dedication and closures of rights-of-way or land to the town.

- A. Improvements within rights-of-way, open space or easements, such as utility lines, street paving, drainage facilities or stormwater BMPs, sidewalks or trails may be accepted for maintenance by the town upon approval by the town board of aldermen

Does not apply.

- B. Property owners or other parties of interest may petition for the closure of a right-of-way offering through the planning department. The planning board, planning department, or other government or utility agency may also request the closure of a right-of-way. Rights-of-way closures shall follow these procedures:
1. A right-of-way closure petition is filed with the planning department. Owners of property abutting the right-of-way or portion of the right-of-way requested for closure must sign the petition and pay a fee as established by the board of aldermen. If all owners of the abutting properties do not sign the petition, notice to abutting property owners shall be given as required by NCGS. If the request is generated from town staff or a board or commission, the fee shall not apply.

Josh Scala submitted a petition for street closing request on January 3, 2019. The petition was signed by Josh and Katharine Scala, owner of 204 Craggy Street; Eleanor McPhail, owner of 99999 Craggy Street; and Thomas and Lillian Logan, owner of 113 W College Street. Josh Scala submitted check #2607 for the amount of \$300.00 for the petition. A copy of the petition and two maps are attached.

*N.C.G.S. 160A-299 (a) states that when a city proposes to permanently close any street or public alley, the council shall first adopt a resolution declaring its intent to close the street or alley and calling a public hearing on the question. The resolution shall be published once a week for four successive weeks prior to the hearing, **a copy thereof shall be sent by registered or certified mail to all owners of property adjoining the street or alley as shown on the county tax records** and a notice of the closing and public hearing shall be prominently posted in at least two places along the street or alley.*

2. The planning director or his/her designee will prepare a staff report that includes a map that shows the length of the right-of-way from terminus to terminus, an inventory of uses within the right-of-way if any (utilities, etc.) and information on possible future uses from any of the town's adopted plans, and place the issue on the next planning board agenda if the petition is filed two weeks before the date of the next meeting, or otherwise at the next meeting.

The requested right-of-way closure is approximately 120.15' in length per a survey recorded in Plat Book 181, Page 72 (attached).

Currently there are no uses in the right-of-way.

The right-of-way does not contain a sewer line or water line.

The right-of-way is not identified on any town plans.

3. The planning board will review the request and make a recommendation to the board of aldermen to accept the petition for closure, to accept the right-of-way

into town control or maintenance, to close any additional areas of right-of-way in addition to the petition, or not accept the petition and leave the right-of-way as an offering.

Staff finds it reasonable to consider this petition request.

4. The planning board shall consider any or all of the following criteria in making their recommendation for closure of a right-of-way:
 - a. Right-of-way identified is not part of adopted town plans.

The requested right-of-way closure is not identified in any of the following plans: Bike Plan, Comprehensive Plan, Greenway Master Plan, Stormwater Master Plan, Recreation and Parks Master Plan, Pedestrian Plan, Wellhead Protection Plan, Hazard Mitigation Plan or Veteran's Park Master Plan.

- b. Right-of-way is not necessary for current or future utilities.

All utilities are located on Craggy Street and W. College Street

- c. Right-of-way in its current condition pose a hazard to public health, safety or welfare.

The right-of-way does not pose a threat to public health, safety or welfare.

- d. Right-of-way is along a drainage that is part of a stormwater management plan.

There are no stormwater systems on this right-of-way nor is it along any drainage system.

- e. Right-of-way provides a current or future corridor for a greenway, alley, or roadway that would meet a specific transportation need.

The right-of-way is not a current corridor and is not identified on the Greenway Master Plan or the Pedestrian Plan for future corridors or roadways. All lots have access from either Craggy Street or W. College Street.

- f. Abutting property owners have signed the petition in favor of the closure.

The owners of 204 Craggy Street, 113 W. College Street and 99999 Craggy Street have signed the petition. These are the owners that abut the portion of the right-of-way that is requested to be closed.

5. The planning board may also make a recommendation to amend the scope or length of the right-of-way closure petition if the board determines that there are compelling reasons to do so. In these cases, the board may direct staff to contact

additional abutting property owners to get their input before making a determination.

If the Planning Board makes a complimentary petition to close the remaining portion of Campbell Street, it will be a separate petition with a separate process.

6. Planning board recommendation is forwarded to the board of aldermen who shall establish a date for a public hearing by adopting a resolution of intent to close. The town attorney shall prepare a description of the right-of-way in question for use in setting the public hearing.

If the Planning Board recommends the closure then the next step would be a call for public hearing before the Board of Aldermen.

7. Area for closure is posted with a visible sign, indicating the scope of the petition, the date for the public hearing, and the phone number of the staff person to contact for information.

This item will be handled by Planning staff.

8. Board of aldermen holds a public hearing and accepts or rejects the petition for closure.

The public hearing will be advertised and held at a regularly scheduled meeting of the Board of Aldermen.

Town of Black Mountain
North Carolina

Date: Jan. 3, 2019

**TO THE BOARD OF ALDERMEN OF THE
TOWN OF BLACK MOUNTAIN**

We, the undersigned, being ^{some} ~~(some)~~ (all) of the owners of the property adjoining the street or alley described below, do hereby petition the Board of Aldermen of the Town of Black Mountain, to close the following described street or alley:

The alley between W. College and Craggy Street.
Its called Cambell Street when it crosses
Central Ave. It runs North to South. It is 40 ft
Wide. PER PB 198 PG: 20. 120.15 ft long.

The undersigned petitioners do certify that the closing of the above described street or alley will not be contrary to the public interest and that no individual owning property in the vicinity of said street or alley, and if it is located in a subdivision, no individual owning property in said subdivision, will be deprived of reasonable means of ingress and egress to his/her property.

The following persons, in addition to the petitioners, own property adjoining the above described street or alley:

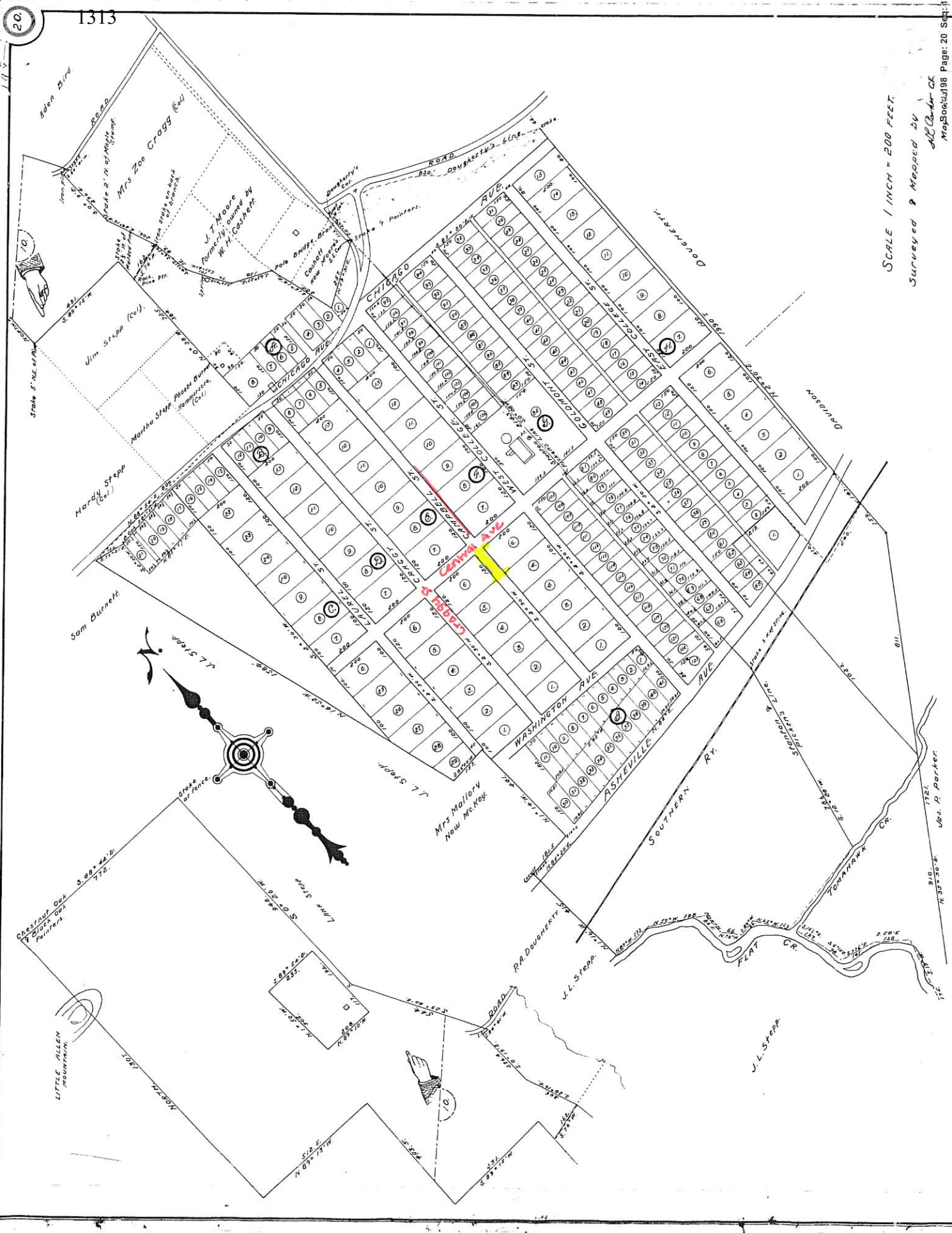
<u>NAME</u>	<u>ADDRESS</u>
<u>Kash</u>	<u>204 Craggy Street Black Mountain, NC 28711</u>
<u>Eleanor McNeil</u>	<u>204 Craggy St Black Mountain NC 28711</u>
<u>Thomas & Lillian Long</u>	<u>9432 Onion Patch Dr Burke, VA 22015</u>
	<u>113 West College St. Black Mtn, NC 28711</u>

WHEREFORE, your petitioners respectfully request the Board of Aldermen of the Town of Black Mountain to adopt a resolution ordering the closing of the above described street or alley.

Witness our signatures the day and year first above written.

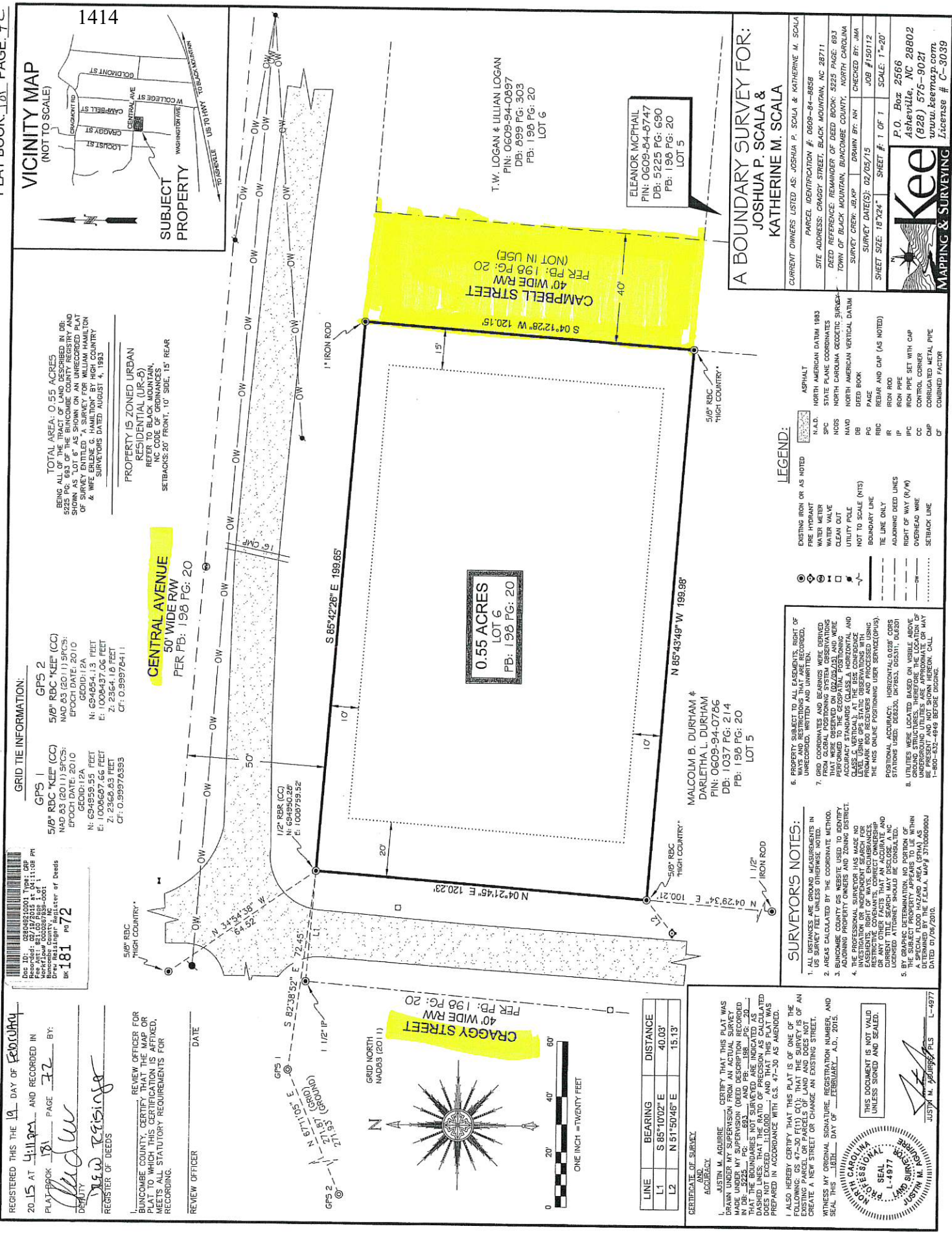
<u>NAME</u>	<u>ADDRESS</u>	<u>PHONE #</u>

pd. check # 2607
JT
1/3/19



SCALE 1 INCH = 200 FEET.
 Surveyed & Mapped by
 H.L. Parker, C.E.
 May 30, 1918 Page 20 Seq. 1

198/861



Campbell Street ROW Property Owners

Name	Address	City	State	Zip
Josh and Katharine Scala	204 Craggy Street	Black Mountain	NC	28711
Eleanor McPhail	9432 Onion Patch Drive	Burke	VA	22015
Dewayne Tillman	5811 Regents Park Rd	Kernersville	NC	27284
Charles and Lynn Freeman	2373 Riceville Road	Asheville	NC	28805
James Inabinett Heirs	PO Box 1714	Lincolnton	NC	28093
Buford and Carolyn Copeland	111 W College Street	Black Mountain	NC	28711
Malcolm Durham Et Al	9717 Anita Lane	Lanham	MD	20706
T W and Lillian Logan	113 W College Street	Black Mountain	NC	28711
Robert Charles Taylor	104 Washington Avenue	Black Mountain	NC	28711



**Town of Black Mountain
Building, Planning and Zoning**

160 Midland Avenue ♦ Black Mountain ♦ North Carolina ♦ 28711
Phone: 828-419-9300 ♦ Fax: 828-669-2030 ♦ TDD: 1-800-735-2962

January 7, 2019

Name
Address
City, State, ZIP

Dear Owner,

This correspondence is to notify you that three property owners have petitioned the Town of Black Mountain to close a portion of the right-of-way of Campbell Street at the intersection of Campbell Street and Central Avenue.

A map has been enclosed to show the portion of the right-of-way that the property owners are requesting to be closed.

This is your notification that the Planning Board will hear this request at their next regularly scheduled meeting on Monday, January 28, 2019 at 6:00 p.m. in the Board Room of Town Hall at 160 Midland Avenue.

If you have questions you may contact me at (828) 419-9373 or
jennifer.tipton@townofblackmountain.org.

Respectfully,

Jennifer Tipton, CZO
Zoning Administrator

Enclosure (1)

www.bmfire.org

spencer.elliott@townofblackmountain.org



Fire Prevention & Inspections Office

Black Mountain Fire Department
106 Montreat Road
Black Mountain, NC 28711
828.419.9333

1/17/2019

Central Ave Right-of-way

Jennifer,

Upon review of the maps and making a site visit the fire department has no issues with the closure of this right-of-way south of Central Ave.

Spencer Elliott
Fire Inspector/Safety Officer
Black Mountain Fire Department

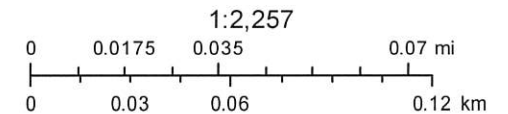
Buncombe County



February 8, 2019

Lot 1 (#9222) - can have access from Washington Ave

Lot 2 (#8586) - has a driveway to Craggy St
20' wide driveway easement
recorded on Plat 871828 (2002)



NCCGIA

Resolution No. R-86-9

A RESOLUTION ORDERING THE CLOSING OF THAT PORTION OF CAMPBELL STREET LYING BETWEEN CRAGGY STREET AND W. COLLEGE STREET

WHEREAS, on the 12th day of May, 1986, the Black Mountain Board of Aldermen of the Town of Black Mountain directed the Town Manager to publish the resolution of intent of the Board of Aldermen to consider closing a certain portion of Campbell Street in the Black Mountain Newspaper once each week for four successive weeks, such resolution advising the public that a meeting would be conducted in the town hall on this date; and

WHEREAS, the Black Mountain Board of Aldermen, on the 12th day of May, 1986, received a petition from the persons owning property abutting on that portion of Campbell Street, asking that the street be closed; and

WHEREAS, a notice of resolution of intent was posted along the right-of-way of said street; and

WHEREAS, after full and complete consideration of the matter and after having granted full and complete opportunity for all interested persons to appear and register any objections that they might have with respect to the closing of said street; and

WHEREAS, it now appears to the satisfaction of the Board of Aldermen that the closing of said street is not contrary to the public interest and that no individual owning property, either abutting the street or in the vicinity of said street or in the subdivision in which said street is located, will as a result of said closing be thereby deprived of a reasonable means of ingress and egress to his/her property; and

WHEREAS, it appears to the satisfaction of the Board of Aldermen that the closing of said street will be in the public interest.

NOW, THEREFORE, BE IT RESOLVED by the Board of Aldermen of the Town of Black Mountain, meeting in regular session, that subject to the reservation of easement to the town for utility purposes, that the portion of Campbell Street lying between Craggy Street and W. College Street and being further described as follows:

LYING AND BEING in Black Mountain Township, Buncombe County, North Carolina.

That portion of Campbell Street which is bounded on its western edge by the eastern boundary of Lots 1 and 2, Block E, Plat Book 198 at Page 20, Buncombe County Registry, and on its eastern edge by the Western Boundary of Lots 1 and 2, Block F, Plat Book 198 at Page 20, Buncombe County Registry.

is hereby ordered closed, and all right, title and interest that may be vested in the public to said area for street purposes is hereby released and quit-claimed to the abutting property owners in accordance with the provisions of G. S. 160A-299.

The Mayor and the Town Manager are hereby authorized to execute quit-claim deeds or other necessary documents in order to prove vesting of all right, title and interest in those persons owning lots or parcels of land adjacent to the street, (reserving from said quit-claims the utility easements reserved herein): such title, for the width of the abutting land owned by them to extend to the centerline of the herein closed street in accordance with the provisions of G. S. 160A-299(c).

RETURN TO: *James D. Black Mt. N.C.*
200 W. College St.
Black Mt. N.C. 28701

1433745

JUN 18 1986

REGISTERED

BK 1433 PG 746

Resolution # R-86-9
Page - 2 -

The Town Manager is hereby ordered and directed to file in the office of the Register of Deeds of Buncombe County a certified copy of this resolution.

Upon motion duly made by Alderman MARETT, and duly seconded by Alderman WHITE, the above resolution was duly adopted by the Black Mountain Board of Alderman at a regular meeting held on the 9th day of June, 1986 in the Town Hall.

Upon call for a vote the following Aldermen voted in the affirmative:

[Signature]
[Signature]
[Signature]
[Signature]

This the 9th day of June, 1986.

[Signature]
Mayor Wm. Michael Begley

ATTEST:

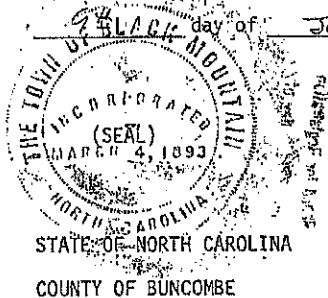
[Signature]
Al Richardson, Town Manager

(SEAL)

BK 1433 PG 747

CERTIFICATE

I, Albert F. Richardson, Jr., Town Manager of the Town of Black Mountain, do hereby certify that the foregoing is a true and accurate copy of Resolution Number R-86-9, which was passed by the Board of Aldermen of the Town of Black Mountain at its regular meeting held on the 9th day of June, 1986, to become effective the 9th day of June, 1986, and that said Resolution Number R-86-9 has been duly filed in the Minutes of the Meeting of the Board of Aldermen dated the 9th day of June, 1986.



Albert F. Richardson Jr.
Albert F. Richardson, Jr.
Town Manager

I, Patricia A. York, a Notary Public of the aforesaid County and State, do hereby acknowledge that Albert F. Richardson, Jr., Town Manager of the Town of Black Mountain, North Carolina, personally appeared before me this day and acknowledged the due execution by him of the foregoing certificate.

WITNESS my hand and Notarial seal, this 10th day of June, 1986.

Patricia A. York
Notary Public

My Commission Expires: October 7, 1989

State of North Carolina, County of Buncombe

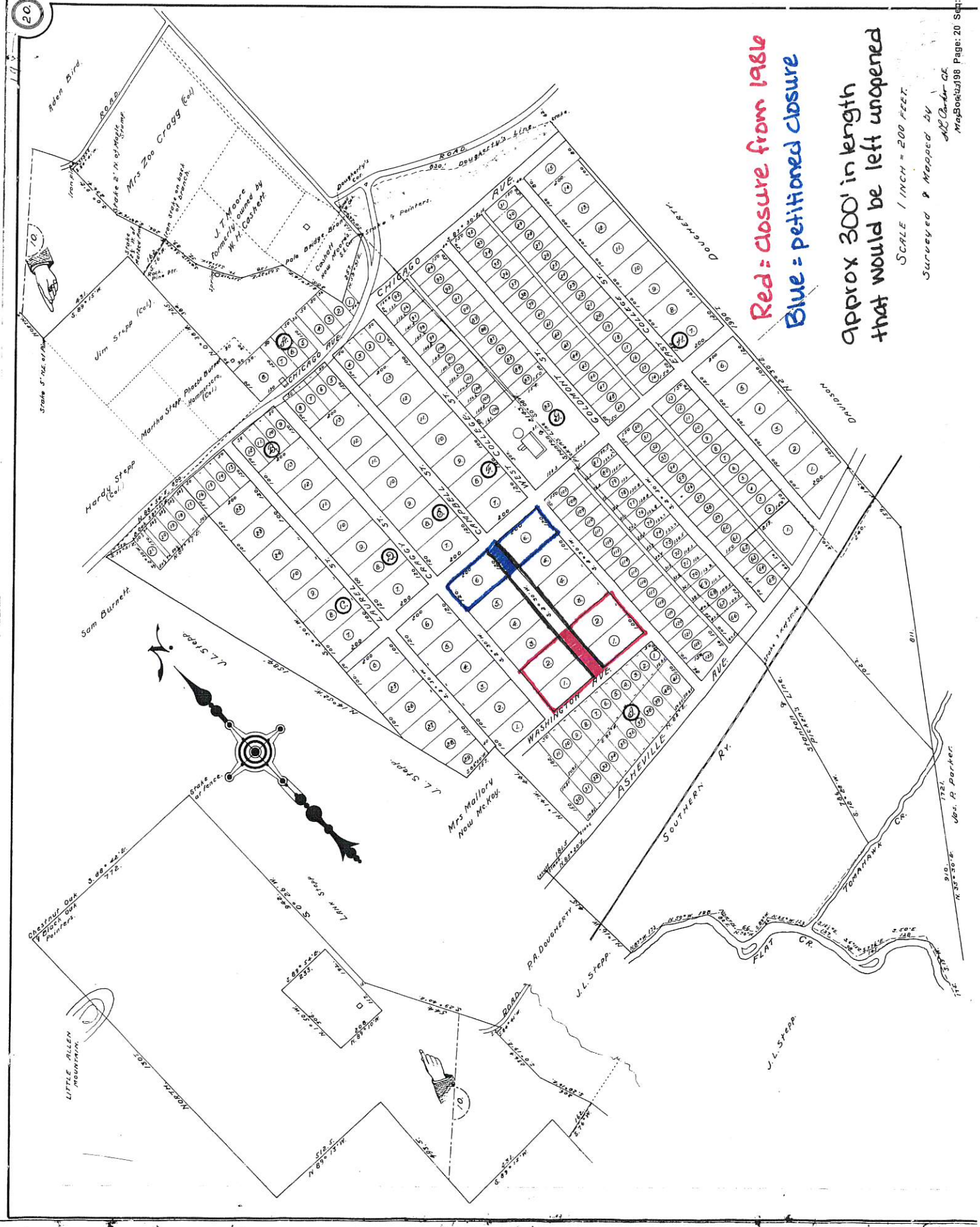
Each of the foregoing certificates, namely of

a notary or Notaries public of the State and County designated is certified to be correct

This 10th day of June, 1986

Filed for registration on the 10th day of June

OTTO W. DeBRUHL
Register of Deeds, Buncombe County
By: Barbara J. Moore Deputy
19 86 at 5:48 P.M.
OTTO W. DeBRUHL
Register of Deeds, Buncombe County
By: Barbara J. Moore Deputy



Red = closure from 1986
 Blue = petitioned closure

approx 300' in length
 that would be left unopened

SCALE 1 INCH = 200 FEET.

Surveyed & Mapped by
 M. Carter-CL
 May 20, 1988 Page: 20



**Town of Black Mountain
Building, Planning and Zoning**

160 Midland Avenue ♦ Black Mountain ♦ North Carolina ♦ 28711
Phone: 828-419-9300 ♦ Fax: 828-669-2030 ♦ TDD: 1-800-735-2962

MEMORANDUM

To: Black Mountain Planning Board

From: Jennifer Tipton, Zoning Administrator

Date: February 1, 2019

RE: Proposed Text Amendment(s) – Bed and Breakfast Homes and Inns

Please find pertinent information attached.

Pages 23-25: Staff Report
Pages 27-28: Text Amendment Application and Supporting Documents
Page 29: Consistency Statement

Summary:

Theresa Fuller of Arbor House Bed and Breakfast has submitted an application for a change to text regarding bed and breakfast homes and inns. Ms. Fuller is seeking the text amendment because the current Land Use Code regulations regarding bed and breakfast homes and inns is not up to date with the current language from the general statutes.

Below are the current definitions and the definitions from the general statutes as well as the requirements for bed and breakfast homes and inns from Chapter 5.

Current Definition:

Bed and breakfast home: A private, owner-occupied residence with one to four guest rooms where overnight accommodations and a morning meal are provided to transients for compensation, and where the bed and breakfast use is subordinate and incidental to the main residential use of the building. The home owner shall reside on site and employment shall not exceed the equivalent of one full-time employee in addition to the owner.

Bed and breakfast inn: A private, owner-occupied business with five to twelve guest rooms where overnight accommodations and a morning meal are provided to transients for compensation and where the bed and breakfast inn is operated primarily as a business. The home owner shall reside on site and employment shall not exceed the equivalent of three full-time employees in addition to the owner.

Section 5.5.1 – Bed and breakfast homes and inns.

- A. The maximum number of guest rooms shall be four for a bed and breakfast home and 12 for a bed and breakfast inn.
- B. The bed and breakfast shall be operated by a resident manager. For bed and breakfast homes, there shall be a maximum of one full-time employee in addition to the owner. For bed and breakfast inns, there shall be a maximum of three full-time employees in addition to the owner.
- C. The use shall contain only one kitchen facility. Meals served on the premises shall be only for overnight guests and residents of the facility.

NCGS 130A-247 - Definitions

(5a) “Bed and breakfast home” means a business in a private home of not more than eight guest rooms that offers bed and breakfast accommodations for a period of less than one week and that meets all of the following criteria:

- a. Does not serve food or drink to the general public for pay.
- b. Services the breakfast meal, the lunch meal, the dinner meal, or a combination of all or some of these three meals, only to overnight guests of the home.

- c. Includes the price of breakfast in the room rate. The price of additional meals served may be added to the room rate at the conclusion of the overnight guest's stay.
- d. Is the permanent residence of the owner or the manager of the business.

(6) "Bed and breakfast inn" means a business of at least nine but not more than 12 guest rooms that offers bed and breakfast accommodations for a period of less than one week, and that meets all of the following requirements:

- a. Does not serve food or drink to the general public for pay.
- b. Serves the breakfast meal, the lunch meal, the dinner meal, or a combination of all or some of these three meals only to overnight guests of the business.
- c. Includes the price of breakfast in the room rate. The price of additional meals served may be added to the room rate at the conclusion of the overnight guest's stay.
- d. Is the permanent residence of the owner or the manager of the business.

Buncombe County Definition and Requirements

Bed and Breakfast inn: Means a private, owner occupied business with four to 20 guests where overnight accommodations and a morning meal are provided to guests for compensation and where the bed and breakfast inn is operated primarily as a business.

Section 78-678 – Uses by right subject to special requirements and conditional use standards.

(a) (1) Bed and breakfast inns. Standards for bed and breakfast inns shall be as follows:

- a. Signage. Signage is limited to a single sign, not to exceed eight square feet, with a maximum height of four feet.
- b. Parking. Parking shall only be located in side and rear yards and is subject to the off-street parking requirements located in table 3 of section 78-658.
- c. Buffering. Property line buffering must meet the requirements described in section 78-667 and parking areas must be screened from adjacent properties through the use of vegetation or solid fencing.
- d. Occupancy. Bed and breakfast inns are limited to no more than ten occupants.

Proposed Text Amendment(s)

Bed and breakfast home: A private, owner-occupied residence with ~~one to four~~ **no more than eight** guest rooms where overnight accommodations and a morning meal are provided to transients for compensation, and where the bed and breakfast use is subordinate and incidental to the main residential use of the building. The home owner shall reside on site and employment shall not exceed the equivalent of one full-time employee in addition to the owner.

Bed and breakfast inn: A private, owner-occupied business with ~~five to twelve~~ **at least nine but not more than 12** guest rooms where overnight accommodations and a morning meal are provided to transients for compensation and where the bed and breakfast inn is operated primarily as a business. The home owner shall reside on site and employment shall not exceed the equivalent of three full-time employees in addition to the owner.

Attachments:

Text Amendment Application
Consistency Statement Worksheet



Town of Black Mountain

160 Midland Avenue ♦ Black Mountain, North Carolina ♦ 28711

Phone: 828-419-9300 ♦ Fax: 828-669-2030

OFFICE OF THE ZONING ADMINISTRATOR

APPLICATION FOR A CHANGE TO ZONING CODE

Date: 1/28/2019

To: TOWN OF BLACK MOUNTAIN
ZONING ADMINSTRATOR

THE SECTION OF THE ZONING CODE YOU ARE REQUESTING TO BE CHANGED:

5.5.1 text change to North Carolina definition
of bed and breakfast and inns, 130A-247 5a + b

AN APPLICATION FOR A CHANGE TO THE ZONING CODE HAS BEEN APPLIED FOR BY:

Name: Theresa Fuller Phone: 828-357-8525
Company: Arbor House of Black Mountain Bed (if applicable)
Address: 207 Rhododendron Ave and Breakfast
Black Mountain, NC 28711

THE APPLICANT BELIEVES THE ZONING CHANGE SHOULD BE GRANTED FOR THE FOLLOWING REASONS:

The code has not been addressed since April
26, 1999, back when 4 rooms or less did not owe
occupancy tax. The code is not up to date.
The NC code was changed 3 times since 1999.
The latest change was 2 years ago. The NC
code is more depicted by what is actually set
in Black Mountain

SIGNATURE

DATE: 1/28/2019

Zoning and Ordinances Discussion for Arbor House of Black Mountain

Bed and Breakfast

As of August 2, 2018 Arbor House is a Neighborhood mixed use district (UR-8) with conditional permitting to be a Bed and Breakfast House.

Black Mountain Ordinances

<https://library.municode.com/search?stateId=33&clientId=8128&searchText=bed%20and%20breakfast&contentType=d=CODES>

5.1.1 - Purpose.

The Town of Black Mountain finds that there are certain uses that exist which may be constructed, continued, and/or expanded provided they meet certain mitigating requirements specific to their design and/or operation. Such additional requirements ensure compatibility with other uses and conformance to the town's comprehensive plan or other adopted plans. This chapter specifies those requirements that must be met by all the uses listed in the uses permitted with additional requirements section for each district in chapter 4.

Each use shall be permitted in compliance with all additional requirements listed for the use in this chapter. Certain uses are also classified as *conditional uses* or *special uses* and require board of adjustment approval per chapters 6 and 7.

5.5.1 - Bed and breakfast homes and inns.

The maximum number of guest rooms shall be four for a bed and breakfast home and 12 for a bed and breakfast inn.

The bed and breakfast shall be operated by a resident manager. For bed and breakfast homes, there shall be a maximum of one full-time employee in addition to the owner. For bed and breakfast inns, there shall be a maximum of three full-time employees in addition to the owner.

The use shall contain only one kitchen facility. Meals served on the premises shall be only for overnight guests and residents of the facility.

5.20.4 - Temporary use requirements for bed and breakfast homes or inns in residential districts.

This section only applies to bed and breakfast home and/or inns located within residential districts.

Temporary uses or special events on these properties shall comply with the following conditions:

A permit shall be issued by the zoning administrator for a time period of up to three days (72 hours).

Parking for special events shall be restricted to the premises of the bed and breakfast homes. However, should off premises parking be necessary, written permission from the owner of the property used for off premise parking shall be required. Said written permission shall be turned in with the application.

Special events or caterings shall be limited to one per month.

Any excessive noise, excessive traffic, inconvenience to neighbors, or failure to comply with any of the other guidelines shall be cause for revocation of the permit.

Failure to comply with the established guidelines after the second written warning within 12 months will result in the permit being revoked and a new temporary permit shall not be issued for a period of 12 months.

No temporary banners or signs shall be displayed in conjunction with the event.

Buncombe County Ordinances

<https://www.buncombecounty.org/common/planning/zoning/zoning-ordinance.pdf>

<https://library.municode.com/nc/buncombe-county/codes/code-of-ordinances>

No real definition of a Bed and Breakfast Home, just Inn.

North Carolina General Assembly

<https://www.ncleg.net/>

130A-247. Definitions.

The following definitions shall apply throughout this Part:

- (1) "Establishment" means (i) an establishment that prepares or serves drink, (ii) an establishment that prepares or serves food, (iii) an establishment that provides lodging, (iv) a bed and breakfast inn, or (v) an establishment that prepares and sells meat food products as defined in G.S. 106-549.15(14) or poultry products as defined in G.S. 106-549.51(26).
- (1a) "Permanent house guest" means a person who receives room or board for periods of a week or longer. The term includes visitors of the permanent house guest.
- (2) "Private club" means an organization that (i) maintains selective members, is operated by the membership, does not provide food or lodging for pay to anyone who is not a member or a member's guest, and is either incorporated as a nonprofit corporation in accordance with Chapter 55A of the General Statutes or is exempt from federal income tax under the Internal Revenue Code as defined in G.S. 105-130.2(1) or (ii) meets the definition of a private club set forth in G.S. 18B-1000(5).
- (3) "Regular boarder" means a person who receives food for periods of a week or longer.
- (4) "Establishment that prepares or serves drink" means a business or other entity that prepares or serves beverages made from raw apples or potentially hazardous beverages made from other raw fruits or vegetables or that otherwise puts together, portions, sets out, or hands out drinks for human consumption.
- (5) "Establishment that prepares or serves food" means a business or other entity that cooks, puts together, portions, sets out, or hands out food for human consumption.
- (5a) **"Bed and breakfast home" means a business in a private home of not more than eight guest rooms that offers bed and breakfast accommodations for a period of less than one week and that meets all of the following criteria:**
 - a. Does not serve food or drink to the general public for pay.
 - b. Serves the breakfast meal, the lunch meal, the dinner meal, or a combination of all or some of these three meals, only to overnight guests of the home.
 - c. Includes the price of breakfast in the room rate. The price of additional meals served may be added to the room rate at the conclusion of the overnight guest's stay.
 - d. Is the permanent residence of the owner or the manager of the business.
- (6) **"Bed and breakfast inn" means a business of at least nine but not more than 12 guest rooms that offers bed and breakfast accommodations for a period of less than one week, and that meets all of the following requirements:**
 - a. Does not serve food or drink to the general public for pay.
 - b. Serves the breakfast meal, the lunch meal, the dinner meal, or a combination of all or some of these three meals only to overnight guests of the business.
 - c. Includes the price of breakfast in the room rate. The price of additional meals served may be added to the room rate at the conclusion of the overnight guest's stay.
 - d. Is the permanent residence of the owner or the manager of the business.
- (7) "Limited food services establishment" means an establishment as described in G.S. 130A-248(a4), with food handling operations that are restricted by rules adopted by the Commission pursuant to G.S. 130A-248(a4) and that prepares or serves food only in conjunction with amateur athletic events. Limited food service establishment also includes lodging facilities that serve only reheated food that has already been pre-cooked.
- (8) "Temporary food establishment" means an establishment not otherwise exempted from this part pursuant to G.S. 130A-250 that (i) prepares or serves food, (ii) operates for a period of time not to exceed 21 days in one location, and (iii) is affiliated with and endorsed by a transitory fair, carnival, circus, festival, or public exhibition. (1983, c. 891, s. 2; 1987, c. 367; 1991, c. 733, s. 1; 1993, c. 262, s. 1; c. 513, s. 12; 1995, c. 123, s. 12; c. 507, s. 26.8(f); 1999-247, ss. 3, 4; 2013-360, s. 12E.1(a); 2013-413, ss. 7, 11(a); 2014-115, s. 17; 2014-120, s. 21(a); 2017-211, ss. 4(a), (b).)

TOWN OF BLACK MOUNTAIN
PLANNING BOARD
CONSISTENCY STATEMENT

To: The Board of Aldermen for the Town of Black Mountain

From: The Planning Board for the Town of Black Mountain

Date: February 25, 2019

Subject: Zoning Text Amendment

Description: Amend definition bed and breakfast home and inn

Address: N/A

The Planning Board hereby adopts and recommends to the Board of Aldermen the following statements:

_____ The zoning amendment **is approved and is consistent with the Town's comprehensive plan and is reasonable and in the public interest** because:

How consistent with plan: _____

Why is it reasonable and in the public interest: _____

_____ The zoning amendment **is rejected because it is inconsistent with the Town's comprehensive plan and/or is not reasonable and in the public interest** because:

How inconsistent with the plan: _____

Why is it not reasonable and in the public interest: _____

_____ In addition to approving this zoning amendment, this approval **is also deemed an amendment to the Town's comprehensive plan**. The change in conditions taken into account amending the zoning ordinance to meet the development needs of the community and why this action is reasonable and in the public interest are as follows:

