

**TOWN OF BLACK MOUNTAIN
ZONING BOARD OF ADJUSTMENT**

The Black Mountain Zoning Board of Adjustment held its regular meeting on Thursday, February 15, 2018 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:

Cheryl Milton, Chair
Jillian Ballard, Secretary
Rebecca Harris
Bob Osmundsen
Janet McKimpson, Alternate
Ted Mattson, Alternate

Absent:

John DeWitt, Vice Chair
Pam Pauly, Alternate

Staff:

Jennifer Tipton, Zoning Administrator
Ron Sneed, Town Attorney

The meeting was called to order at 6:10 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

Jillian Ballard made a motion to adopt the agenda. The motion was seconded by Janet McKimpson and approved by a vote of 4-0. Member Rebecca Harris arrived late and did not vote.

III. ADOPTION OF MINUTES – January 18, 2018

Janet McKimpson made a motion to adopt the minutes as written. The motion was seconded by Bob Osmundsen and approved by a vote of 4-0. Member Rebecca Harris arrived late and did not vote.

IV. BUSINESS

1. Variance Request for 342 Avena Road

Jennifer Tipton gave a brief overview to the board of the variance request for 342 Avena Road to allow an accessory structure to remain in the front yard. The property at 342 Avena Road is in the UR-8 zoning district, has a 25.46% slope and the setbacks for accessory structures are 5' and the structure must be in the side or rear yard. The structure has not been permitted or inspected.

Matthew Gutowski, 342 Avena Road, said that when he purchased the building he was told that he did not need a permit. Mr. Gutowski explained that he put the accessory structure in the front yard because in the side and back there is a well, well house, power lines and a slope. The building is 26' x 36' and was built on site on a concrete slab. The concrete is 13" thick at the edges and 4 ½" to 5" thick in the center.

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John Anderson, 85 Pearl Street, said that he did not have a problem with the location and with the terrain of the lot he understood why the owner put it where he did and is in favor of the variance.

Terry Dalton, 351 Avena Road, said that the current location is about the only level spot in the yard to place the accessory structure and the colors are muted so the structure blends in with the surroundings. Mr. Dalton thinks the accessory structure looks fine where it is. Several board member were concerned that a permit had not been pulled and that inspections had not been done to determine compaction. Ms. Tipton explained that the department has been having problems with the contractor who sold the building and that the building inspector is addressing that. Ms. Tipton also explained that the applicant has filed for a permit and if approved for the variance, the application will go to the building inspector for approval and inspections. Ms. Tipton presented the following evidence into the record:

- Town's Exhibit 1: Variance application
- Town's Exhibit 2: Picture of accessory structure
- Town's Exhibit 3: Two pictures (showing different angles of the pump house)
- Town's Exhibit 4: Two pictures (showing parts of the slope of the lot)
- Town's Exhibit 5: Two pictures (showing parts of the slope of the lot)
- Town's Exhibit 6: Copy of check and receipt
- Town's Exhibit 7: Buffer map of property owners within 200'
- Town's Exhibit 8: List of property owners within 200'
- Town's Exhibit 9: Notice to property owners within 200'
- Town's Exhibit 10: Certificate of mailing
- Town's Exhibit 11: Aerial map of property
- Town's Exhibit 12: Property posting

Rebecca Harris made a motion to go into recess to deliberate at 6:37 p.m. The motion was seconded by Jillian Ballard and approved by a vote of 5-0. Jillian Ballard made a motion to reconvene at 7:00 p.m. The board found the following:

1. There are exceptional conditions and circumstances pertaining to this piece of property because the lot is long, narrow and steep.
2. There are unnecessary hardships because the lot is long and narrow and has a steep grade.
3. The hardship did not result from actions taken by the property owner because they had not control over the shape or grade of the lot.
4. The variance will be in harmony with the purpose and intent of the Land Use Code because the location of the accessory structure is not more visible from the road than the home and does not dominate the view of the property from the road. The variance does not create a risk to public safety because it does not obstruct the view from the driveway entrance and does not create fire risks to nearby buildings. Substantial justice will be achieved because the variance will allow the property owner to have an accessory structure as is allowed by ordinance and which other owners of properties within the zoning district are allowed to have.

Jillian Ballard made a motion to grant the variance. The motion was seconded by Bob Osmundsen and approved by a vote of 4-1 with Cheryl Milton voting against.

2. Variance Request for Lot 190 Crockett Ridge Road

Jennifer Tipton gave a brief overview to the board of the variance request for Lot 190 Crockett Ridge Road to reduce the front and rear setbacks from 30' to 15'. Ms. Tipton explained that the

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lot is zoned CR-1 and has setbacks of 30' in the front, 10' on each side and 30' in the rear. The lot has a slope of 16.70% and there is not a stream on the property.

Chip Knight, 2025 Sand Branch Road, is the agent for the property and said that the request is to be able to fit a 1,600 square foot home on the lot and with the required setbacks, the house does not fit but with the requested setbacks, the house plan would be doable.

Rod Allan, 136 Settings Boulevard, said that the minimum square footage for a house on Crockett Ridge is 1,200 square feet. Mr. Allan said he has been a resident of the The Settings since 2012, is the current chair of the Design Review Board and author of the new design guidelines and has been a past president of the HOA.

Ms. Tipton presented the following evidence into the record:

- Town's Exhibit 1: Variance application
- Town's Exhibit 2: Survey showing proposed variance setbacks
- Town's Exhibit 3: Copy of check and receipt
- Town's Exhibit 4: Buffer map of property owners within 200 feet
- Town's Exhibit 5: List of property owners within 200 feet
- Town's Exhibit 6: Notice of variance request to property owners within 200 feet
- Town's Exhibit 7: Certificate of mailing (2 pages)
- Town's Exhibit 8: Aerial map
- Town's Exhibit 9: Posting of property

Bob Osmundsen made a motion to go into recess at 7:13 p.m. The motion was seconded by Jillian Ballard and approved by a vote of 5-0. Jillian Ballard made a motion to reconvene at 7:19 p.m. The motion was seconded by Rebecca Harris and approved by a vote of 5-0.

The board found the following:

1. There was no evidence offered to show that the property has any features or characteristics that create an unnecessary hardship other than the size of the lot.
2. There was no evidence offered to show that the proposed structure had features essential to the use of the property or the welfare of the property owner or buyer other than the proposed floor plan being preferred by the buyer.

Jillian Ballard made a motion to deny the variance request for lack of hardship. The motion was seconded by Janet McKimpson and approved by a vote of 5-0.

V. ZBA COMMISSION/STAFF COMMENTS – Reports, Communications and Announcements

None.

VI. PUBLIC COMMENT

None.

VII. ADJOURNMENT

With no further business, the meeting was adjourned at 7:31 p.m.

Prepared by:

Cheryl Milton, Chair

Jennifer Tipton, Zoning Administrator

Jillian Ballard, Secretary