



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 Zoning Board of Adjustment
From: Jennifer Tipton, Zoning Administrator
Re: Agenda Packet for April 19, 2018
Date: April 9, 2018

The Town of Black Mountain Zoning Board of Adjustment will meet on Thursday, April 19, 2018 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 February 15, 2018 and
3. Review of Watson Record for reviewable findings of fact.

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
William Morgan
Jeffrey Stahl



PUBLIC NOTICE

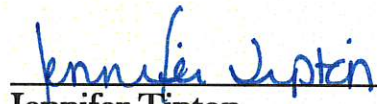
BLACK MOUNTAIN ZONING BOARD OF ADJUSTMENT

REGULAR MEETING

Thursday, April 19, 2018 at 6:00 p.m.

The Black Mountain Zoning Board of Adjustment will meet for their monthly meeting on **Thursday, April 19, 2018 at 6:00 p.m.** at Town Hall, 160 Midland Avenue, Black Mountain, N.C.

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, Zoning Administrator at (828) 669-2030 or by email at Jennifer.tipton@townofblackmountain.org

Posted to the Town Bulletin Board 03/28/18

www.townofblackmountain.org



**Zoning Board of Adjustment Regular Meeting
April 19, 2018**

PROPOSED AGENDA

I. CALL TO ORDER

- Welcome
- Declare 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 ^{March}February 15, 2018 as written [or as amended]

IV. OLD BUSINESS

- None

V. NEW BUSINESS

- Review of Watson Record for reviewable findings of fact

VI. COMMUNICATION FROM ZONING BOARD OF ADJUSTMENT

VII. COMMUNICATION FROM STAFF

VIII. ADJOURNMENT



**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

April 8, 2016

Chair to the Board of Adjustment
160 Midland Avenue
Black Mountain, N.C. 28711

VIA Email and Regular Mail

RE: Richard and Teresa Watson Appeal to the Board of Adjustment

Dear Chair:

Pursuant to N.C.G.S. §160A-388 (b1) (5), please find enclosed the Record in the above-referenced case, which I am transmitting to the Board of Adjustment. If you have any questions, please do not hesitate to contact me.

Sincerely,

Jennifer Tipton

Enclosure

CC: Mr. & Mrs. Richard Watson
Jeffrey Stahl, Esq.
Ronald E. Sneed, Esq.
William Morgan, Esq.
Board of Adjustment Members
Daniel Cordell, Building Inspector
Josh Harrold, Planning Director
Matt Settlmyer, Town Manager

BEFORE THE TOWN OF BLACK MOUNTAIN BOARD OF ADJUSTMENT
BUNCOMBE COUNTY

RICHARD AND TERESA WATSON APPEAL OF
BUILDING INSPECTOR'S DECISION
1599 GROVESTONE ROAD
BLACK MOUNTAIN, NC 28711

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)
)
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RECORD

Building Permit #1352 Issued 01/07/14	1
Inspection Report for Permit #1352	2
GIS Aerial View of 1599 Grovestone Road	3
Picture of Inside of Structure (01/02/15)	4
Letter Dated January 13, 2015 re: permit	5
Response from Mr. & Mr. Watson re: Letter Dated January 12, 2015	6
Letter Dated January 6, 2016 re: Violation of Non-Residential Maintenance Code (Section 2.1.13) and N.C.G.S. §160A-426, Unsafe Buildings.....	7
Land Use Code Section 2.1.13 (adopted 09/14/15)	8
N.C.G.S. §160A-426 Unsafe Structures	9
Response from Mr. & Mrs. Watson re: Letter Dated January 6, 2016	10
Letter Dated January 28, 2016 re: Hearing scheduled for 02/17/16	11
Answer to Notice of Hearing Dated January 28, 2016 from Jeffrey Stahl	12
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Order from February 17, 2016 Hearing	14
Appeal Application Dated March 28, 2016	15
Legal Notice of Evidentiary Hearing for Appeal	16
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BUILDING PERMIT APPLICATION

Town of Black Mountain
160 Midland Avenue
Black Mountain, N.C. 28711
Phone: 828-419-9300 Fax: 828-669-2030

PERMIT #: 28
() Residential
(☒) Commercial
() Flood Zone
Elevation: _____

Owner Name: RICIL Watson Owner Phone #: _____
Owner Address: 5 Watson Rd. Black Mountain NC 28711

Project Address: 1599 Grovestone Rd. PIN #: 0609-01-6926

Please attach if applicable:

- * Two (2) sets of plans
- * Site Plan
- * Progress Energy Premise #: _____
- * Septic Permit/MSD Permit
- * LEED or Healthy Built Home Certified
- * Stormwater Control Plan
- * Boundary Line
- * Elevation Certificate
- * Sedimentation/Erosion Control Permit
- * Architectural Site Review
- * Prior to final inspection, house numbers must be attached to outside of house and visible from street

Zone	Type Building	Min. Lot Area	Front	Rear	Side	Max. Ht.	REMARKS
() CR-1							
() SR-2							
() TR-4							
() UR-8							
() OI-6							
() NMU-8							
() CB							
() HB-8							
() LI-8							
() HI-0							
() TND							
() ICD							

Signed _____ Zoning Administrator

Areas:

Total Heated Sq. Ft. _____
Covered Unheated: _____
Open Decks: _____
Concrete/Asphalt: _____
Area of Land Disturbed: _____

Project Cost: \$ 30,000.00

Accommodations: _____
Bedrooms: _____ Baths: _____
Kitchen: _____ No. of Stories: _____

Brief Description of Job: Repair EXISTING ROOF

CONSTRUCTION OF FENCE

FEES:

Building: _____ HR (Fund): _____
Plumbing: _____ Cert. of Occupancy: _____
Mechanical: _____ Fire/Sprinkler: _____
Electrical: _____ Gas: _____
Zoning: _____ Stormwater: _____

Clean Up Fee: _____
Other: _____

Total Fees: 150.00
Cash: _____ Check #: 4261

* A Final Inspection Must Be Scheduled Prior to Completion of Project*
To Schedule an Inspection, please call 419-9300 ext. 372.

CERTIFICATION

I (We) agree to conform to all Federal, State and local codes and ordinances. All materials will be kept presentable on the lot and all debris will be removed prior to issuance of a Certificate of Occupancy.

DATE: _____ SIGNED BY: _____ OWNER

DATE: _____ SIGNED BY: [Signature] CONTRACTOR

PERMIT APPROVAL DATE: 1-7-14 BUILDING OFFICIAL: [Signature]

NOTE: If the work has not been started within six (6) months of permit issuance date, or the work has been ceased for twelve (12) months, the permit will become void and all fees will be surrendered.

SPECIFICATIONS

FOUNDATIONS

- ☐ Concrete Block
- ☐ Poured Wall
- ☐ Slab on Grade
- ☐ Other _____

WALLS

- ☐ Wood Siding
- ☐ Vinyl Siding
- ☐ Stucco
- ☐ Other _____

SUB-FLOORING

- ☐ Diagonal
- ☐ Plywood (T&G)

FLOORING

- ☐ Hardwood
- ☐ Tile
- ☐ Vinyl
- ☐ Carpet

ROOFING

- ☐ Fiberglass
- ☐ Wood
- ☐ Metal
- ☐ Other _____

HEATING & AIR CONDITIONING

- ☐ none ☐ Elect. Resist
- ☐ Heat Pump ☐ Central Air
- ☐ Fireplace ☐ Window Units

PLUMBING FIXTURES: Give number of:

- ☐ Lavatories ☐ Closets ☐ Sinks
- ☐ Tub/Showers ☐ Water Heaters

Gas Appliances: List appliances & BTU demands. (If gas installed for other than fireplaces, detailed schematic required)

Concrete: ☐ Under House ☐ Driveway ☐ Other _____

Insulation	Type	Thickness	R-Factor
Exterior Wall			
Ceiling			
Floor			

Contractor Information

	Phone #	State License #	BM Priv. Lic. #
1. General Contractor <u>OWNER</u>			
2. Electrical Contractor			
3. Mechanical Contractor			
4. Plumbing Contractor			
5. Other			

IMPORTANT NOTICE:

Construction site must be kept clean and presentable at all times. Do not allow debris to blow on adjacent properties, roads, streams, etc. A "STOP WORK ORDER" will be issued for violations and a penalty will be assessed. Contractor must remove all construction advertisement signs within 30 days upon completion of said job.

Town of Black Mountain Inspection Report

Permit #: 1352
Address: _____

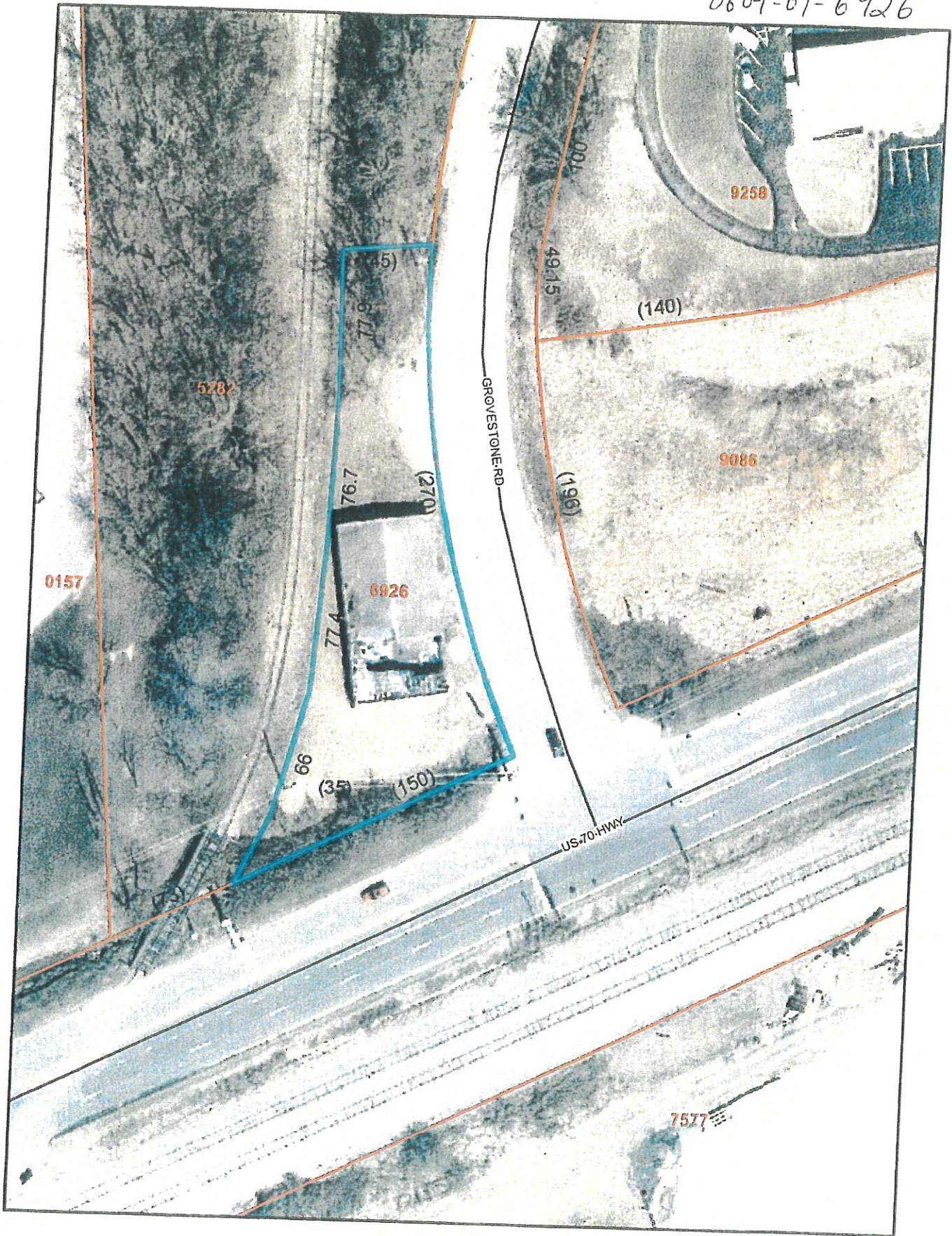
PIN #: _____
Permit Type: _____

[illegible]

Completed Date: _____ Inspector: _____

Buncombe County Map

0609-01-6926



25 50 100 Feet





Write a comment

1-2-15 JH

Dan Cori
Just now



Add a description

Tag Photo

Write a comment



People You May Know



Maquy Li
Add

Sponsored

Build Your Honda
Shop online to easily
a new Honda Accord



Town of Black Mountain

160 Midland Avenue • Black Mountain, North Carolina 28711
Phone (828) 419-9300 • Fax (828) 669-4204 • TDD 800-735-2962
www.townofblackmountain.org

Mayor
C. Michael Sobol

Board of Aldermen
Vice Mayor Don Collins
Alderman Larry B. Harris
Alderman Carlos Showers
Alderman Ryan Stone
Alderman Maggie Tuttle

Town Manager
Matt Settlemyer

January 12, 2015

Mr. Rick Watson
5 Watson Rd.
Swannanoa, NC 28778

Dear Mr. Watson,

I know you have been dealing with our Building Inspector, Dan Cordell, regarding repairs to your building at 1599 Grovestone Rd. While he has made some inspections of your work it does not appear that repairs have actually commenced on the property within the one year time period. In order for your permit to remain valid, observable work should begin within 30 days of this letter. We appreciate your efforts to renovate your property and look forward to working with you. If you have any questions or concerns feel free to contact me at 419-9300.

Sincerely,

Matt Settlemyer
Town Manager

Rick & Teresa Watson
5 Watson Road
Swannanoa, NC 28778

Town of Black Mountain
C/O Matt Settlemyer
160 Midland Avenue
Black Mountain, NC 28711

Re: Letter dated January 12, 2015 regarding 1599 Grovestone Rd.

Mr. Settlemyer:

We are in receipt of your letter dated January 12, 2015 regarding our property at 1599 Grovestone Road. As you stated, we have been dealing with Dan Cordell, the building inspector regarding repairs at that location for several years. An inspection was performed on January 2, 2015, by Dan Cordell, and a one year extension on our permit was granted. Your letter states that "observable work" should begin within 30 days of this letter. We were not aware that "observable work" was the standard used by the Town of Black Mountain in granting building permit extensions. However, the fact that Mr. Cordell has "made some inspections" alludes to the fact that work has been performed.

With that said, since we are in compliance with our permit, we take issue with your letter. We do not feel we are being treated the same as other property owners in Black Mountain for reasons unbeknownst to us. It gives us reason to believe that there is some other ulterior motive behind your letter.

For starters, your own inspector has issued an extension after an inspection. What is the basis for you to apparently overturn this extension and place a burden on us to perform "observable work" within 30 days. What do you know about the repairs that have commenced on our property? Based on the administrative code the only person representing the Town of Black Mountain allowed on our property is the building inspector. Did you look at the file Mr. Cordell maintains regarding our permit and inspections and talk to him before you sent this letter? We are perplexed that you have decided to undermine Mr. Cordell, again for reasons we do not understand.

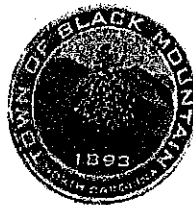
Based on novice appearances alone, a person not familiar with our property could conclude no work has been done due to the appearance that is "visible" from the roadway alone. We are sure that you are not aware that tons of debris had to be removed from inside the building before any structural work on the interior could begin. Work, therefore, has actually commenced but to the novice observer from the street that might not know it. The excavator parked outside the building spent several days inside the building clearing the fallen roof pieces and repairing some of the interior structure. Considerable work has to be done on the sub structure of the building in order to put a roof on it.

You are attempting to invalidate a valid permit that an extension was granted for by inserting a vague requirement that "observable work" be performed. We do not understand what your definition of "observable" work is nor do we believe this is the proper standard to apply. We also do not believe you can unilaterally revoke the extension which Mr. Cordell has given based upon the justifications set forth in your letter. We are demanding that you provide us records of all extensions of building permits which were granted within the last ten years and with records of any time wherein the Town Manager has revoked an extension based upon "observable work" not having commenced. We truly hope that there are no ulterior motives, as referenced above, and that we have not been singled out by the Town.

Our attorney, Jeff Stahl, will be contacting Ron Sneed regarding this matter. We would request that any further correspondence from you regarding this permit should be made to Mr. Stahl through the Town attorney.

Sincerely,

Rick & Teresa Watson



**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 6, 2015

Richard & Teresa Watson
5 Watson Road
Swannanoa, NC 28778

Dear Mr. & Mrs. Watson,

This correspondence is in regards to property you own at 1599 Grovestone Road, PIN #0609-01-6926, in the Town of Black Mountain, N.C.

On September 14, 2015, the Board of Aldermen unanimously passed an ordinance regarding maintenance of non-residential structures within the Town of Black Mountain. As such, all non-residential premises shall be maintained in a state of good repair and any of the following items may constitute a violation of this ordinance and must be corrected:

1. Such damage by fire, wind or other causes as to render the building unsafe;
- ② Dilapidation, decay, unsanitary conditions or disrepair, which is dangerous to the health, safety and welfare of the occupant or other people in the town;
- ③ Defects significantly increasing the hazards of fire, accident or other calamities;
4. Buildings and environs shall be kept clear of accumulations of garbage, trash, or rubbish, which creates a health and sanitation problems;
5. Flammable, combustibles, explosive or other dangerous or hazardous materials shall be stored in a manner approved for such materials and consistent with the town fire prevention code;
- ⑥ The building and environ surfaces shall be kept clear of broken glass, loose shingles, and similar hazardous conditions;
7. The building and environs shall be kept free of objects and elements protruding from building walls, roof and environs which are unsafe and not properly secured or which can create a hazard such as abandoned electrical boxes and conduits, wires, sign brackets and other similar objects;
8. Attached and unattached accessory structures shall not cause a safety hazard and shall be in good repair;
9. Advertising sign structures, attached or freestanding awnings, marquees and their supporting members and other similar attachments and structures shall be maintained in good repair and shall not cause a safety hazard to the occupants, pedestrians or other residents of the town;
- ⑩ Floors or roofs shall have adequate support members and strength to be reasonably safe; and

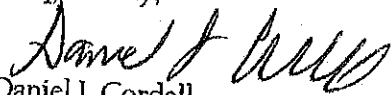
11. Steps, railings, landings, porches, fire escapes or other parts or appurtenances, shall be maintained in such condition that they will not fail or collapse.

Your building is currently in violation of items #2, #3, #6 and #10 and N.C.G.S. 160A-426, Unsafe Buildings.

We are giving you fifteen (15) days to come into compliance with the non-residential maintenance code. If no work has been done after the fifteen (15) days, then a notice of violation will be issued.

If you have any questions, you may contact our office at (828) 419-9300 ext. 604.

Respectfully,


Daniel I. Cordell
Building Inspector

ORDINANCE NO. # 0-15-13

AN ORDINANCE TO ADD TEXT SECTIONS TO CHAPTER 2, SECTION 2.1.12 AND SECTION 2.1.13 NON RESIDENTIAL MAINTENANCE CODE OF THE LAND USE CODE

WHEREAS, the Town of Black Mountain Planning Board is charged with reviewing and updating land use planning, zoning, and subdivision regulations; and

WHEREAS, the Planning Board made a commitment to the Board of Aldermen to review the text of the Land Use Code in the years since its adoption to address any residual inconsistencies in the text and to look for opportunities to clarify or improve text; and

WHEREAS, upon recommendation of the Planning Board, the following text amendments are required in order to carry out vision statement three: community appearance and vision statement eight: public safety of the 2014 Comprehensive Plan;

NOW, THEREFORE the Land Use Code, Chapter 2, of the Town of Black Mountain is hereby amended with the following (additions are in bold italics and deletions are shown as red struck text):

1. Section 2.1.12

2.1.12 – Unsafe residential buildings condemned.

- A. The building inspector is appointed to exercise the powers of condemnation as provided under G.S. 160A-426—160A-443.
- B. Any residential building or manufactured home which shall appear to the building inspector to be especially dangerous to life because of its liability to fire or because of bad condition of walls, overloaded floors, defective construction, decay, unsafe wiring or heating system, inadequate means of egress, or other causes, shall be held to be unsafe, and the inspector shall affix a notice of the dangerous character of the structure to a conspicuous place on the exterior wall of said building.
- C. Any non-residential building may be declared unsafe if it appears to the building inspector to be 1) vacant or abandoned or 2) in such a dilapidated condition as to cause or contribute to blight, disease, vagrancy, fire or safety hazard, to be a danger to children, or tend to attract persons intent on criminal activities or other activities which would cause a public nuisance and the inspector shall affix a notice of the dangerous character of the structure to a conspicuous place on the exterior wall of said building.
- D. If after proper notification and posting the owner does not take any action to repair or rectify structures in order to address the liabilities that resulted in condemnation, the building inspector shall hold a hearing at a designated place and time at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter.

- E. Following the hearing, the building inspector may issue such order to repair, close, vacate, or demolish the structure as appears appropriate. Corrective actions and appeals shall continue to follow the procedures provided in the general statutes, including but not limited to, the town's ability to demolish structures and take a lien against the real property upon which the cost was incurred.

2. Section 2.1.13

2.1.13 A. Maintenance standards for non-residential structures.

All non-residential premises shall be maintained in a state of good repair that prevents further decay from wind, rain and external weather and secures the building from any unauthorized admittance from humans, animals or birds. All non-residential premises shall be free of nuisances and any hazards to the safety of occupants, customers or other persons utilizing the premises or to pedestrians and/or vehicles passing thereby. Without limitation of the foregoing requirement, the existence of any of the following conditions shall be deemed to be a violation of this section and must be corrected;

- (1) Such damage by fire, wind or other causes as to render the building unsafe;
- (2) Dilapidation, decay, unsanitary conditions or disrepair, which is dangerous to the health, safety and welfare of the occupants or other people in the town;
- (3) Defects significantly increasing the hazards of fire, accident or other calamities;
- (4) Buildings and environs shall be kept clear of accumulations of garbage, trash, or rubbish, which creates health and sanitation problems.
- (5) Flammable, combustibles, explosive or other dangerous or hazardous materials shall be stored in a manner approved for such materials and consistent with the town fire prevention code;
- (6) The building and environs surfaces shall be kept clear of broken glass, loose shingles, and similar hazardous conditions.
- (7) The building and environs shall be kept free of objects and elements protruding from building walls, roof and environs which are unsafe or not properly secured or which can create a hazard such as abandoned electrical boxes and conduits, wires, sign brackets and other similar objects;
- (8) Attached and unattached accessory structures shall not cause a safety hazard and shall be in good repair;
- (9) Advertising sign structures, attached or freestanding awnings, marquees and their supporting members and other similar attachments and structures shall be maintained in good repair and shall not cause a safety hazard to the occupants, pedestrians or other residents of the town;
- (10) Floors or roofs shall have adequate support members and strength to be reasonably safe;
- (11) Steps, railings, landing, porches, fire escapes or other parts or appurtenances, shall be maintained in such condition that they will not fail or collapse;

B. Investigation.

Whenever it appears to the building inspector that a nonresidential building or structure has not been properly maintained so that the safety or health of its occupants or members of the general public are jeopardized for failure of the property to meet the minimum standards established by section 2.1.13 A, the building inspector shall undertake a preliminary investigation. If entry upon the premises for purposes of investigation is necessary, such entry shall be made pursuant to a duly issued administrative search warrant or with permission of the owner, the owner's agent, a tenant, or other person legally in possession of the premises.

C. Complaint and hearing.

- (a) If the preliminary investigation discloses evidence that a building is in violation of the minimum standards, he shall issue and cause to be served upon the owner of such building a complaint stating the charges and containing a notice that a hearing will be held before the building inspector at a place and time therein fixed, not less than ten (10) nor more than thirty (30) days after the serving of said complaint. The owner shall have the right to file an answer to the complaint and to appear in person or otherwise, and give testimony at the place and time fixed in the complaint. Any person desiring to do so may attend such hearing and give evidence relevant to the matter being heard. The rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the building inspector. Following the hearing, the building inspector shall dismiss the complaint if he finds no violation; if he finds that violations of this article exist, he shall order compliance setting forth a maximum of up to 180 days within which to correct the violations. Such order shall contain an outline of remedial action which, if taken, will effect compliance and with the provisions of this article.
- (b) If the building inspector determines that the repairs, alterations or improvements necessary to bring the building into compliance with the provisions of this article can be made at the cost of less than 50 percent of the present value of the building, he shall state in writing his findings of fact in support of such determination, and shall issue and cause to be served upon the owner thereof, an order directing and requiring the owner to repair, alter and improve such building to comply with the standards contained herein.
- (c) If the building inspector determines that the repairs, alterations or improvements necessary to bring the building into compliance with the provisions of the article cannot be made at a cost of less than 50 percent of the present value of the building, he shall state in writing his findings of fact in support of such determination, and shall issue and cause to be served upon the owner thereof an order directing and requiring the owner to either repair, alter and improve such building to comply with the standards contained herein or to demolish the building. The property owner may rebut the value calculations of the building inspector by providing an appraisal of the value of the property and an estimate of repair costs provided by a qualified contractor.

D. Service of complaints and orders.

- (a) Complaints and all orders issued by the building inspector shall be served by the building inspector upon persons either personally or by registered or certified mail. When service of a complaint or order is accomplished personally or by registered or certified mail, such service is hereby deemed to be complete on the day of delivery to or receipt by the person served. When service is made by registered or certified mail, a copy of the complaint or order may also be sent by regular mail. Service shall be deemed sufficient if the registered or certified mail is unclaimed or refused, but the regular mail is not returned by the post office within ten (10) days after mailing. If regular mail is used, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected.
- (b) If the identities of any owners or the whereabouts of persons are unknown and the same cannot be ascertained by the building inspector in the exercise of reasonable diligence, or, if the owners are known but have refused to accept service by registered or certified mail and the building inspector makes an affidavit to that effect, then the serving of such complaint or order in the town at least once no later than the time at which personal services would be required under the provisions of this article. When service is made by publication, a copy of the complaint or order shall be posted in a conspicuous place on the premises affected by the complaint or order; in the case of the complaint, it must be posted at least ten (10) days prior to the hearing.

E. Failure to comply with orders.

- (a) If the owner fails to comply with an order to repair the building or structure, the building inspector may:
- (1) Cause such structure to be repaired, and pending such repairs, may order the building to be vacated and closed;
 - (2) Cause to be posted on the main entrance of any structure so closed, a placard entitled, "Notice of condemnation" with the following words:

"Notice is hereby given that this building is unsafe and dangerous condition; may constitute a fire hazard by reason of structural defects and general state of decay, deterioration and disrepair; may be hazardous or dangerous to children or members of the public generally, or may be dangerously infested with vermin, rodents or insects. Such building has been condemned under the building laws of the State of North Carolina and the Town of Black Mountain."
- (b) If the owner fails to comply with an order to remove or demolish the building, the building inspector may:
- (1) Cause such structure to be removed or demolished;
 - (2) Cause to be posted, pending demolition, on the main entrance of any structure so closed, a placard entitled, "Notice of condemnation" with the following words:

"Notice is hereby given that this building is unsafe and dangerous condition; may constitute a fire hazard by reason of structural defects and general state of decay, deterioration and disrepair; may be hazardous or dangerous to children or members of the public generally, or may be dangerously infested with vermin, rodents or insects. Such building has been condemned under the building laws of the State of North Carolina and the Town of Black Mountain."

- (c) The duties of the building inspector set forth in subsections (a) and (b) shall not be exercised until:
- (1) The town attorney shall institute in the general court of justice an appropriate action to seek an order of the court directing such owner to comply with the order of the building inspector; or
 - (2) The building inspector shall request the board to order him by an ordinance specifically describing the subject property to do either of the following:
 - a. To cause such building to be repaired, altered and improved to comply with the standards established by this article; or
 - b. To cause such building to be vacated, closed, and removed or demolished. The board, in ordering one of the aforesaid alternatives, shall order the specific action that will best effectuate the purposes of this article. Once the ordinance is adopted by the board a true copy of such ordinance shall be recorded in the office of the register of deeds of the county and the registrar shall index the name of the property owner in the "grantor index."
- (d) The amount of the cost of repairs, alterations and improvements, or vacating, closing and removal or demolition shall be a lien against the real property upon which the cost was incurred. Such lien shall be filed, have the same priority and be collected as the lien for special assessment provided in Article 10, Chapter 160A of the North Carolina General Statutes. If the unsafe building is removed or demolished by the building inspector, he shall, if possible, sell in any commercially reasonable manner the materials of the unsafe building and shall credit the proceeds of the sale, if any, against the cost of the removal or demolition. Any balance remaining shall be deposited by the building inspector with the clerk of superior court for subsequent disbursement by the court to the persons found by the court to be entitled thereto.
- (e) Nothing in this section shall be construed to impair or limit in any way the power of the town to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise, nor shall enforcement of one remedy provided herein prevent the enforcement of any other remedies provided herein or otherwise.
- (f) Nothing in this section shall be construed to impair or limit in any way the power of the building inspector in the proper enforcement of the duties of his office, as assigned, nor shall the enforcement of one remedy provided herein prevent the enforcement of any other remedies provided herein or otherwise.

F. Appeals.

- (a) An appeal from any decision or order of the building inspector pursuant to this article may be taken by any person aggrieved thereby. Any appeal from the building inspector in which the decision of the building inspector is a violation of the state building code shall be taken within ten (10) days of receipt of such order in writing, with such appeal to be to the Department of Insurance. All other appeals shall be taken by filing with the zoning board of adjustment (hereinafter called "ZBA") a notice of appeal within thirty (30) days from date of receipt of the building inspector's decision in writing, and such notice of appeal shall specify the grounds upon which the appeal is based. Upon the filing of any notice of appeal, the building inspector shall forthwith transmit to the ZBA all the papers constituting the record upon which the decision appealed from was made. When an appeal is from a decision of the building inspector refusing to allow the person aggrieved thereby to do any act, his decision shall remain in force until modified or reversed. When any appeal is from a decision of the building inspector requiring the person aggrieved to do any act, the appeal shall have the effect of suspending the requirement until the hearing by the ZBA, unless the building inspector certifies to the board after the notice of appeal is filed with him, that by reason of the facts stated in the certificate (a copy of which shall be furnished to the appellant), a suspension of his requirement would cause imminent peril to life or property. In that case, the requirement shall not be suspended except by a restraining order, which may be granted for due cause upon not less than five (5) days' written notice by a court of record. All regulations, fees and other rules of the ZBA shall apply to these appeals.
- (b) The ZBA shall fix a reasonable time for the hearing of all appeals, shall give due notice to all the parties, and shall render its decision within a reasonable time. Any party may appear in person or by agent or attorney. The ZBA may reverse or affirm wholly or partly, or may modify the decision or order appealed from, and may make such decision and order as in its opinion ought to be made in the matter, and to that end it shall have all the powers of the building inspector, but the majority vote of the members of the ZBA shall be necessary to reverse or modify any decision or order of the building inspector. The ZBA shall have power also in passing upon appeals, in any case where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance, to adapt the application of the ordinance to the necessities of the case to the end that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done.
- (c) If the building is in the historic preservation district, or has been determined by the Historic Preservation Commission to be a historic structure, the ZBA may enter an order holding the matter in abeyance provided that the owner repairs the building on a timely basis. Such repairs shall commence within six (6) months of the ZBA's order and shall be completed within two (2) years of said date. All such repairs shall be completed in such a way as to maintain the historic character of the building and shall comply with the United States Secretary of Interior standards for the treatment of historic rehabilitation and the rules and guidelines of the Black Mountain Historic Preservation Commission. If the repairs are not commenced and completed

within the time periods set out in the order, the building inspector shall proceed to enforce his original order.

- (d) Every decision of the ZBA shall be subject to review by the county superior court by proceedings in the nature of certiorari instituted within thirty (30) days of the receipt of the written decision of the ZBA.

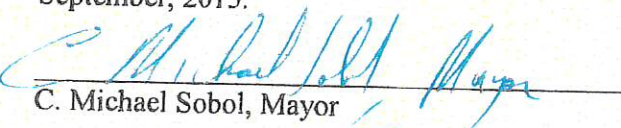
G. Violations and penalties.

- (a) It shall be unlawful for the owner of any building to fail, neglect, or refuse to repair, alter, and improve the same; or to fail to vacate, close and remove or demolish the same, upon order of the building inspector duly made and served as herein provided, within the time specified in such order, and each day that any such failure, neglect, or refusal to comply with such order continues shall constitute a separate and distinct offense. It shall be unlawful for the owner of any building with respect to which an order has been issued pursuant to this article to occupy or permit the occupancy of the same after the time prescribed in such order for its repair, alteration and improvement or its vacation, closing and removal or demolition, and each day that such occupancy continues after such prescribed time shall constitute a separate and distinct offense.
- (b) Any owner of a building who fails to comply with any order described in subsection (a), or who allows occupancy of the building subject to such order after the compliance period in the order has expired, shall be subject to a civil penalty of \$500.00 for each day that noncompliance continues following the expiration of the compliance period specified in the order of compliance. If a person fails to pay the civil penalty within ten (10) days of the citation, the town may seek to collect it in a civil action in the nature of a debt.
- (c) Each day that a violation continues after notification that such violation exists shall constitute a separate and distinct offense for purposes of the penalties and remedies set forth in this section.
- (d) This article may be enforced by any appropriate equitable action.
- (e) This article may be enforced by any one, or any combination of the remedies authorized in this section.

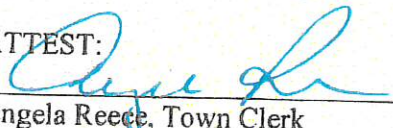
H. This ordinance shall become effective ninety (90) days after its adoption

Reserved.

READ, APPROVED AND ADOPTED, by a vote of 5 to 0, this the 14th day of September, 2015.


C. Michael Sobol, Mayor

ATTEST:


Angela Reece, Town Clerk

§ 160A-426. Unsafe buildings condemned in localities.

- (a) **Residential Building and Nonresidential Building or Structure.** - Every building that shall appear to the inspector to be especially dangerous to life because of its liability to fire or because of bad condition of walls, overloaded floors, defective construction, decay, unsafe wiring or heating system, inadequate means of egress, or other causes, shall be held to be unsafe, and the inspector shall affix a notice of the dangerous character of the structure to a conspicuous place on the exterior wall of the building.
- (b) **Nonresidential Building or Structure.** - In addition to the authority granted in subsection (a) of this section, an inspector may declare a nonresidential building or structure within a community development target area to be unsafe if it meets both of the following conditions:
- (1) It appears to the inspector to be vacant or abandoned.
 - (2) It appears to the inspector to be in such dilapidated condition as to cause or contribute to blight, disease, vagrancy, fire or safety hazard, to be a danger to children, or to tend to attract persons intent on criminal activities or other activities that would constitute a public nuisance.
- (c) If an inspector declares a nonresidential building or structure to be unsafe under subsection (b) of this section, the inspector must affix a notice of the unsafe character of the structure to a conspicuous place on the exterior wall of the building. For the purposes of this section, the term "community development target area" means an area that has characteristics of an urban progress zone under G.S. 143B-437.09, a "nonresidential redevelopment area" under G.S. 160A-503(10), or an area with similar characteristics designated by the city council as being in special need of revitalization for the benefit and welfare of its citizens.
- (d) A municipality may expand subsections (b) and (c) of this section to apply to residential buildings by adopting an ordinance. Before adopting such an ordinance, a municipality shall hold a public hearing and shall provide notice of the hearing at least 10 days in advance of the hearing. (1905, c. 50-6, s. 15; Rev., s. 3010; 1915, c. 192, s. 15; C.S., s. 2773; 1929, c. 199, s. 1; 1969, c. 1065, s. 1; 1971, c. 698, s. 1; 2000-164, s. 1; 2001-386, s. 1; 2006-252, s. 2.19; 2009-263, s. 2.)

Rick & Teresa Watson
5 Watson Road
Swannanoa, NC 28778

January 11, 2016

Town of Black Mountain
160 Midland Avenue
Black Mountain, NC 28711

Attention: Dan Cordell, Building Inspector

Dear Mr. Cordell:

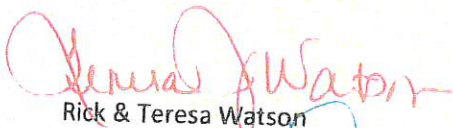
We received your letter dated January 6, 2016. Based on our understanding of the town ordinance, you should have made a preliminary investigation of our building prior to sending this letter.

Since we are working under a valid building permit, we are surprised that you did not call us to gain entry to the building and allow us to be present at the inspection.

So, pursuant to the Freedom of Information Act we request the following:

- A copy of the above inspection and the specific locations of all these violations.
- Provide a list of the persons involved in the inspection process.
- A list of all the properties that have been sent a letter based on this ordinance since it was passed in September.
- A list of all persons involved in preparing and authorizing this notice.

Very truly yours,


Rick & Teresa Watson




**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

NOTICE OF HEARING

28 January, 2016

Richard & Teresa Watson
5 Watson Rd.
Swannanoa, NC 28711

Dear Mr. & Mrs. Watson,

This correspondence is in regards to property you own at 1599 Grovestone Rd, bearing PIN #0609-01-6926, in the Town of Black Mountain, N.C.

Complaints have been received that the property is in violation of the Town Ordinance Maintenance Code. You were sent a letter giving fifteen (15) days to have the building brought into compliance.

A preliminary investigation of the property was conducted on 27 January 2016 and the property remains in violation of Section 2.1.13 (2),(3)&(6).

This is your notice that a hearing has been scheduled for Wednesday, 17 February 2016 at 11:00 am at Town Hall. You have a right to file an answer to the notice and to appear in person or otherwise and give testimony at the time and place noted above.

If you have any questions you may contact our office at (828) 419-9300 ext. 604.

Sincerely,

Daniel I. Cordell
Building Inspector

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

TOWN OF BLACK MOUNTAIN

ANSWER TO NOTICE OF HEARING DATED JANUARY 28, 2016

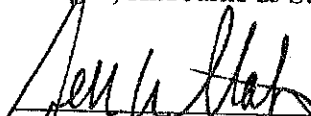
Now comes Richard Watson and Teresa Watson ("Watsons") by and through the undersigned attorney and answers the "NOTICE OF HEARING" issued by the Town of Black Mountain:

1. The use of the property constituting the alleged violations was in existence prior to the adoption of this ordinance and should therefore be grandfathered in pursuant to N.C. Gen. Stat. §106A-364.1(d).
2. The letter dated January 6, 2016, contains no specific instruction as to what measures needed to be taken in order to remedy the alleged violations.
3. The "NOTICE OF HEARING" letter contains no specific instruction as to what measures need to be taken in order to remedy the alleged violations.
4. Watsons have a valid building permit for which they are entitled to continue construction under.
5. Construction has been continuous with no 12 month lapses in work as evidenced by the inspections performed by the building inspector.
6. There has been no order issued by the building inspector to stop work under the building permit due to unsafe working conditions.
7. The building in question does not currently have a certificate of occupancy. Therefore the building does not have any occupants, customers or other persons utilizing the premise.
8. The building is not located near a pedestrian walkway and the building is located in an area where no pedestrians and/or vehicles passing thereby could ever be in any danger unless they are unlawfully trespassing.
9. There are no activities or items being used or stored on the site which would constitute a nuisance.
10. The ordinance contained in Appendix A, Section 2.1.13 is unconstitutionally vague and unenforceable.
11. There are no minimum standards established in Appendix A, section 2.1.13 A.

12. Upon information and belief the Town conducted a preliminary investigation that required entry of the building to conduct but without permission of the Watsons and without a search warrant.

Filed this the 17 day of February, 2016 with the Town of Black Mountain

Dungan, Kilbourne & Stahl, P.A.



Jeffrey K. Stahl

N.C. Bar 32937

One Rankin Ave, Third Floor

Asheville, NC 28801

(828) 254-4778

Fax: (828) 254-4778

TOWN OF BLACK MOUNTAIN
NON-RESIDENTIAL MAINTENANCE CODE HEARING FOR RICHARD & TERESA
WATSON
IN THE MATTER OF PROPERTY LOCATED AT
1599 GROVESTONE ROAD, BLACK MOUNTAIN, NC 28711

On Monday, February 17, 2016 at 11:00 a.m., a hearing regarding the non-residential maintenance code for Richard and Teresa Watson was conducted in the board room of Town Hall, 160 Midland Avenue.

The purpose of the hearing is to address concerns of the structure located at 1599 Grovestone Road and for property owners, Richard and Teresa Watson, to be heard and present evidence in their defense in accordance with Town of Black Mountain Ordinance Section 2.1.13 (C) (a). The said property is further described as PIN #0609-01-6926.00000.

Staff Present:

Daniel Cordell, Building Inspector
Jennifer Tipton, Zoning Administrator

Others:

Richard Watson, owner of 1599 Grovestone Road
Teresa Watson, owner of 1599 Grovestone Road
Jeffrey Stahl, counsel for Mr. & Mrs. Watson

All parties were sworn in.

Daniel Cordell began the hearing by stating that the current tax value on the property is \$62,700.00 and the building is \$0.00.

Mr. Cordell stated that a courtesy letter dated January 6, 2016 was sent to Mr. & Mrs. Richard Watson regarding potential violations at 1599 Grovestone Road and gave fifteen days to come into compliance with section 2.1.13 (a) of the Non-Residential Maintenance Code of the Land Use Code, Appendix A of the Code of Ordinances of the Town of Black Mountain. On January 27, 2016 an inspection of the property was performed by Mr. Cordell and the alleged violations continued. A letter dated January 28, 2016 was sent regarding the hearing for February 17, 2016. All letters were sent certified return receipt with the return receipt cards being received. Mr. Cordell stated that he received a written answer from the Watson's attorney this morning. Mr. Cordell read Section 2.1.13 (a) for the record, which is hereby attached to these minutes, and noted that the property had potential violations regarding items number two, three, six and ten.

Jeffrey Stahl, counsel for the Watson's, noted that in the letter dated January 28, 2016 regarding the hearing, only items number two, three and six were referenced and feels that this hearing should only be for those items. Mr. Stahl stated that there is a valid building permit for the property and a stop work order has not been issued. Mr. Stahl feels that in order to accomplish the goals of the maintenance code, then a stop work order would need to be issued due to the site being an active construction site. Mr. Stahl said that there is a difference between having an active construction site and trying to maintain a building site that is not under construction. Mr. Stahl said that the building does not have any occupants or customers and that there are no pedestrians or vehicles that would drive right up to the building to cause a safety hazard. Mr.

TOWN OF BLACK MOUNTAIN
NON-RESIDENTIAL MAINTENANCE CODE HEARING FOR RICHARD & TERESA
WATSON

IN THE MATTER OF PROPERTY LOCATED AT
1599 GROVESTONE ROAD, BLACK MOUNTAIN, NC 28711

Watson does have no trespassing signs posted on the property. Mr. Stahl said that Mr. Cordell has the authority to dismiss this violation under his judgement and no one else's. Mr. Stahl said that the clients feel that the maintenance ordinance was enacted to specifically address this property and a few others, however, the ordinance is vague and the property owners were offered no criteria of how to come into compliance with the maintenance ordinance. Mr. Stahl said that under N.C.G.S. 160A-364.1 (d) that a use violation in existence prior to creating an ordinance is grandfathered in and since Mr. Watson bought this property as is and the building has not changed, the building should be grandfathered.

Mr. Watson stated that he has an active building permit and has done some demolition of phases, dug footers for roof supports and has been cleaning up the property when he can and when finances allow. Mr. Watson stated that he bought the building in an as is condition and the roof at that time was being held up with a hydraulic jack and when that jack was stolen, the roof collapsed so he had to tear down what remained. Mr. Watson stated that he has not ceased work for a year at a time and has had proper inspections done. Mr. Watson stated that the window panes are constantly vandalized and he will probably brick them over but will need power first to be able to see inside the building. Mr. Watson stated that he does have construction plans that will address the issues raised from Section 2.1.13 (a). Mr. Watson stated that he will take off the shingle roof and replace with a metal roof. Mr. Watson stated that there is nothing inside the building except for open space and some trash cans. Mr. Watson said he does not allow anyone other than his employees to be on the property and he does carry insurance for his employees. The property is posted with no trespassing signs.

Mr. Stahl again spoke of creating an ordinance to retroactively address a violation and there is not an imminent danger being posed from this building. Mr. Stahl stated that the property is in an industrial district with no residential property around it and that no one is impacted as the building does not emit any foul odors, is not going to combust, has no noise, that there is not a sidewalk leading to the property and is not in the main downtown district so it doesn't affect tourists or people walking past the building. Again Mr. Stahl said that Mr. Cordell had the authority to dismiss the violation and based on the evidence and that there are construction plans to remedy all the issues it is inappropriate to apply this maintenance code to an active construction site and should only be done with a stop work order which has a separate process.

Mr. Watson asked who the female was that did the initial inspections and it was stated that Jennifer Tipton did those inspections by driving by the property. Mr. Watson asked Ms. Tipton if she inspected other buildings and she said that she does and goes out usually once a week and does inspections. Mr. Watson asked that next time there be a phone call made and that this was Mr. Cordell's job and not Ms. Tipton's.

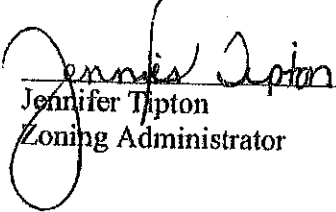
Mr. Stahl asked who the complainants were and Mr. Cordell stated that Town Manager Matt Settlemyer had that information and Mr. Stahl said he would like to have that information since it is the right of the property owner to face their accusers.

TOWN OF BLACK MOUNTAIN
NON-RESIDENTIAL MAINTENANCE CODE HEARING FOR RICHARD & TERESA
WATSON
IN THE MATTER OF PROPERTY LOCATED AT
1599 GROVESTONE ROAD, BLACK MOUNTAIN, NC 28711

Mr. Watson asked Mr. Cordell if he would dismiss the violation. Mr. Cordell stated that he would review the evidence presented and render a decision as soon as possible.

Mr. Cordell, Mr. Stahl and the Watson's had nothing else for the hearing and Mr. Cordell said he will review the information and render a decision as soon as he can.

With no further discussion, the hearing was concluded at 11:22 a.m.



Jennifer Tipton
Zoning Administrator

TOWN OF BLACK MOUNTAIN
COUNTY OF BUNCOMBE

BEFORE THE TOWN OF BLACK
MOUNTAIN BUILDING INSPECTOR

In the Matter of the Violations of)
Non-Residential Maintenance)
Code for Richard & Teresa Watson at)
1599 Grovestone Road)
_____)

ORDER

THIS CAUSE, coming on to be heard by the Town of Black Mountain Building Inspector in the board room at Town Hall, 160 Midland Avenue, Black Mountain, North Carolina, at 11:00 a.m. on February 17, 2016, upon a letter citing violations of the Town of Black Mountain Non-Residential Maintenance Code at 1599 Grovestone Road in Black Mountain.

Appearing for the Town was Daniel Cordell, Building Inspector.

Appearing for the property owners was Richard and Teresa Watson and Counsel Jeffrey Stahl.

The Building Inspector, having considered all testimony and all exhibits presented by Mr. Stahl and Mr. Watson, makes the following

FINDINGS OF FACT

1. The Building Inspector has jurisdiction over this matter pursuant to Section 2.1.13 (C) of the Land Use Code, Appendix A of the Code of Ordinances of the Town of Black Mountain.

2. Based on the Non-Residential Maintenance Code of the Land Use Code, Appendix A of the Code of Ordinances for the Town of Black Mountain, the building in question is in violation of items number two, three, and six.

Dilapidation, decay, unsanitary conditions or disrepair, which is dangerous to the health, safety and welfare of the occupants or other people in town.

Defects significantly increasing the hazards of fire, accident or other calamities.

The building and environs surfaces shall be kept clear of broken glass, loose shingles, and similar hazardous materials. .

3. A courtesy letter was sent to Mr. and Mrs. Watson on January 6, 2016 giving fifteen days to come into compliance with the non-residential maintenance code.

4. An inspection of the property was conducted on January 27, 2016 and it was noted that there were continued violations.

5. Proper notice of the hearing was provided as required by Town ordinances in a letter to the property owners dated January 28, 2016.

6. Richard and Teresa Watson own the property located at 1599 Grovestone Road, Black Mountain, North Carolina, PIN #0609-01-6926.00000.

7. The current tax value on the property is \$62,700.00 and the building is \$0.00.

8. Written notice in response to the alleged complaints was given to Mr. Cordell on February 17, 2016.

9. There is a valid building permit for the property.

10. No trespassing signs are posted on the property.

11. Demolition of certain phases has taken place on the property.

12. No one other than Mr. Watson's employees are allowed on the property and he does carry insurance on his employees.

13. There are construction plans for the property to address the alleged violations.

BASED UPON THE FOREGOING FINDINGS OF FACT, the Building Inspector concludes that the owner is working to comply with Section 2.1.13 (a) of the Non-Residential Maintenance Code of the Land Use Code, Appendix A of the Code of Ordinances of the Town of Black Mountain and that some remedies have already been made and further remedies will be forthcoming based on construction plans.

IT IS NOW, THEREFORE ORDERED by the Building Inspector that the building located at 1599 Grovestone Road be given one hundred and eighty days (180) to come into compliance with Section 2.1.13 (a) of the Non-Residential Maintenance Code of the Land Use Code, Appendix A of the Code of Ordinances of the Town of Black Mountain.

This the 26th day of February, 2016.


DANIEL I. CORDELL, Building Inspector
Town of Black Mountain

If you are dissatisfied with this decision, an appeal may be taken to the Zoning Board of Adjustment within 30 days after the date this is served on you.



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

APPEAL FROM DECISION OF THE BUILDING INSPECTOR

Date: 3 / 28 / 2016

TO: The Zoning Board of Adjustment for the Town of Black Mountain
C/o Zoning Administrator
160 Midland Avenue
Black Mountain, N.C. 28711

THIS IS AN APPEAL FROM A DECISION OF THE BUILDING INSPECTOR, TO WIT:
(brief description of decision, order, citation, etc. of Building Inspector appealed from) Order of Daniel I. Cordell dated 2/26/16

ADDRESS, PIN# AND ZONING CLASSIFICATION OF PROPERTY AFFECTED: 1599
Grovestone Road, Black Mountain, PIN#069-01-6926.00000, non-
residential

NAME, ADDRESS AND TELEPHONE NUMBER OF PARY APPEALING: Richard and
Teresa Watson , 5 Watson Road, Swannanoa, NC 28778,
828-275-1435

BRIEF STATEMENT OF GROUNDS FOR APPEAL:

Property use was in existence prior to ordinance adoption. Appellants have a valid building permit. Construction has been continuous with no 12 month lapses. No stop work order under the building permit due to unsafe working conditions has been issued. See attachment for additional information.

APPELLANT: _____

OR

ATTORNEY FOR APPELLANT: _____

Jeffrey K. Stahl

(Additional pages may be attached, including any documentation in support of appeal.)

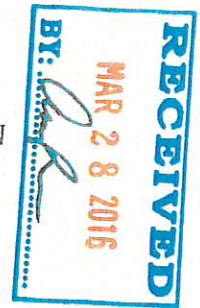
(Note: This Notice of Appeal must be filed with the Zoning Administrator within thirty days of the decision of the Building Inspector or, in case of a citation issued by the Building Inspector, within thirty days after service of the citation on the affected party.)

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

In the Matter of the Violations of)
Non-Residential Maintenance)
Code for Richard & Teresa Watson at)
1599 Grovestone Road)
_____)

TOWN OF BLACK MOUNTAIN
BUILDING INSPECTOR

NOTICE OF APPEAL



Now comes Richard Watson and Teresa Watson ("Watsons") by and through the undersigned attorney and hereby appeal the order of Daniel I. Cordell, Building Inspector, Town of Black Mountain dated February 26th, 2016 (hereinafter the "Order").

1. The use of the property constituting the alleged violations was in existence prior to the adoption of this ordinance and should therefore be grandfathered in.
2. Watsons have a valid building permit for which they are entitled to continue construction under.
 - a. Construction has been continuous with no 12 month lapses in work as evidenced by the inspections performed by the building inspector.
 - b. There has been no order issued by the building inspector to stop work under the building permit due to unsafe working conditions.
3. Appendix A, section 1.1.7, section B states that "it is not intended that this ordinance repeal, abrogate, annul, impair, or interfere with any existing building permits previously adopted or issued pursuant to law and currently effective. The ordinance in question attempt to interfere with an existing building permit in that it attempt to interpose maintenance requirements to a construction site. It makes no reasonable sense to force someone to replace windows or shingles on a structure during a construction site where demolition has not been completed.
4. The Watsons are in compliance with the Town's building permit requirements. However, the Town, upon information and belief, does not like the timeframe which that ordinance allows for work to be performed so it created this ordinance to specifically address the Watson's property and one or two other non-conforming properties in Town. However the Watson's property does have a valid building permit for which construction has been ongoing within the proposed timeframes in the ordinance.
5. There is no basis for the violations alleged:
 - a. The building in question does not currently have a certificate of occupancy. Therefore the building does not have any occupants, customers or other persons utilizing the premise.

- b. The building is not located near a pedestrian walkway and the building is located in an area where no pedestrians and/or vehicles passing thereby could ever be in any danger unless they are unlawfully trespassing.
 - c. There are no activities or items being used or stored on the site which would constitute a nuisance.
6. The ordinance contained in Appendix A, Section 2.1.13 is unconstitutionally vague and unenforceable because there are no minimum standards established in Appendix A, section 2.1.13 A.
7. The order is invalid pursuant to Section 2.1.13 C. (a), which requires the order to "contain an outline of remedial action which, if taken, will effect compliance and with the provisions of this article". The Order fails to outline any specific remedial action that needs to take place.
- a. The letter dated January 6, 2016, contains no specific instruction as to what measures needed to be taken in order to remedy the alleged violations.
 - b. The "NOTICE OF HEARING" letter contains no specific instruction as to what measures need to be taken in order to remedy the alleged violations.
8. At minimum the Watsons are entitled to know exactly what measures they need to take that will be acceptable to the Town to remedy any alleged violations.

Filed this the 25 day of March, 2016 with the Town of Black Mountain

Dungan, Kilbourne & Stahl, P.A.



Jeffrey K. Stahl
N.C. Bar 32937
One Rankin Ave, Third Floor
Asheville, NC 28801
(828) 254-4778
Fax: (828) 254-4778

LEGAL NOTICE



EVIDENTIARY HEARING

Town of Black Mountain

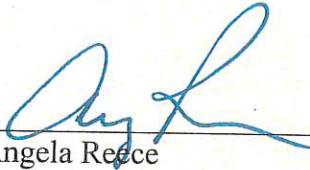
Zoning Board of Adjustment

April 21, 2016

The **Town of Black Mountain Board of Adjustment** will hold an evidentiary hearing on **Thursday, April 21, 2016 at 6:00 p.m.** in the boardroom of the Town Hall Building, 160 Midland Avenue, Black Mountain, N.C.

The purpose of this hearing is to hear an appeal of the Building Inspector.

The meeting is open to the public.



Angela Reece
Town Clerk

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 contact Jennifer Tipton at (828) 419-9373 or by email at jennifer.tipton@townofblackmountain.org.

Posted on Town Hall Bulletin Board: 04/04/16

Black Mountain News Publication for two weeks: 04/07/16 and 04/14/16

CERTIFICATE OF SERVICE

This is to certify that the foregoing Record has been duly served by depositing a copy of the same in the United States Mail, first-class, postage pre-paid, as well as by electronic mail, to the following:

Mr. & Mrs. Richard Watson
5 Watson Road
Swannanoa, N.C. 28778

Mr. Jeffrey Stahl, P.A.
Counsel to Appellant
One Rankin Avenue, Third Floor
Asheville, N.C. 28801
jstahl@dunganlaw.com

Archie Pertiller
Member of Board of Adjustment
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Black Mountain, N.C. 28711
Archie.pertiller@yahoo.com

Bob Pauly
Member of Board of Adjustment
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Black Mountain, N.C. 28711
Bob49pauly@gmail.com

Elaine Loutzenheiser
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Black Mountain, N.C. 28711
Elainelout410@gmail.com

Terry McCall
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Black Mountain, NC 28711
duffmac@charter.net

Cheryl Milton
Member of Board of Adjustment
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bullmilt@aol.com

Jerry Atkins
Alternate of Board of Adjustment
PO Box 635
Black Mountain, N.C. 28711
Jerry.atkin08@gmail.com

John DeWitt
Alternate for Board of Adjustment
169 Hilltop Road
Black Mountain, N.C. 28711
drjohndewitt@me.com

Jillian Ballard
Alternate for Board of Adjustment
97 Taylor Street
Black Mountain, N.C. 28711
jballard@roberts-steven.com

Ronald E. Sneed
Attorney to Staff
104 Church Street
Black Mountain, N.C. 28711
ronsneed@bellsouth.net

Josh Harrold
Planning Director
160 Midland Avenue
Black Mountain, N.C. 28711
Josh.harrold@townofblackmountain.com

Dan Cordell
Building Inspector
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Black Mountain, N.C. 28711
Dan.cordell@townofblackmountain.org

Matt Settlemyer
Town Manager
160 Midland Avenue
Black Mountain, N.C. 28711
Matt.settlemyer@townofblackmountain.com

William Morgan
Attorney to Board of Adjustment
75 Church Street
Asheville, N.C. 28816
morgan@broughlawfirm.com

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Appeal April 7, 2016

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CREDITOR'S NOTICE

Having qualified as Executor of the Estate of Marilyn Sue Short, deceased, late of Buncombe County, North Carolina, this is to notify all persons having claims against the Estate of said deceased to exhibit them to the undersigned on or before the 17th day of June, 2016, for this notice will be pleaded in bar of their recovery. All persons indebted to said Estate will please make immediate payment.

Susan Carole Short, Corcoran, Executor of the Estate of Marilyn Sue Short, Deceased

Adam L. Shealy, Insure
Van Winkle, Bucks
Wall, Starnes
& Davis, P.A.
422 South Main
Street
Hendersonville, NC
28792

3-17, 24, 31-16
4-7-16
No. 34080

NOTICE OF ADMINISTRATION

Having qualified as Executor of the Estate of Mary Katherine Gorrell Williams of Buncombe County, North Carolina, this is to notify all persons having claims against the Estate to present them to the undersigned on or before June 24, 2016 or this notice will be pleaded in bar of their recovery. All persons indebted to said Estate, please make immediate payment.

4-7, 14-16
No. 34120

Legals

EVIDENTIARY HEARING

Town of Black Mountain
Board of Aldermen
April 21, 2016

The Black Mountain Zoning Board of Adjustment will hold an evidentiary hearing on Thursday, April 21, 2016 at 6:00 p.m. in a boardroom of the Town Hall Building, 160 Midland Avenue, Black Mountain, NC.

The purpose of this hearing is to hear a conditional use application for Givens Highland Farms Phase 2 and 3. PIN #0609-55-1146.

The meeting is open to the public.

Angela Reece,
Town Clerk

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. Should you need assistance or a particular accommodation for this meeting, please contact Jennifer Tipton at (828) 419-9373 or by email at jennifer.tipton@townofblackmountain.org.

4-7, 14-16
No. 34120

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EVIDENTIARY HEARING

Town of Black Mountain
Board of Aldermen
April 21, 2016

The Town of Black Mountain Board of Adjustment will hold an evidentiary hearing on Thursday, April 21, 2016 at 6:00 p.m. in the boardroom of the Town Hall Building, 160 Midland Avenue, Black Mountain, NC.

The purpose of this hearing is to hear an appeal of the Building Inspector.

The meeting is open to the public.

Angela Reece,
Town Clerk

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4-7, 14-16
No. 34121

NOTICE TO CREDITORS

Having qualified as Administrator of the Estate of George Stephen Plym, deceased, late of Buncombe County, North Carolina, this is to notify all persons, firms and corporations having

Legals

EVIDENTIARY HEARING

Town of Black Mountain
Board of Aldermen
April 21, 2016

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Town Clerk

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Board of Aldermen
April 21, 2016

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4-7, 14-16
No. 34121

NOTICE TO CREDITORS

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Required Education: Bachelor's degree in Nursing/BSN
Preferred Education: Master's Degree in Nursing/MSN
Required License: Current licensure as a registered nurse with the North Carolina Board of Nursing or compact state as defined by NCBBN. Current ACLS and A&LS.
Required Experience: A minimum of 2 years of experience relevant to clinical nursing practice with demonstrated leadership skills. Previous supervisory experience.

Apply at: www.ashtach.com

Hospitalist Physician

Southern Medical Partners, LLC seeks Hospitalist Physician for employment at Transylvania Regional Hospital, 301 N. Front Street, Brevard, NC 28712. Requires medical degree (U.S. or foreign equivalent degree), completion of residency training in Internal or Family Medicine, BE/BC Internal or Family Medicine, possesses or is able to apply for a North Carolina medical license.

For consideration, send CV to: Cynthia Kippur, Southern Medical Partners, LLC, c/o Schumacher Clinical Partners, 1300 Riverplace Blvd., Suite 300, Jacksonville, FL 32207.

AGRICULTURE

Norton Creek Farms, Inc., Cashiers, NC is now hiring 10 temporary Farm Workers to work in Macon, Jackson and Clay Counties, NC from 4/15/2016 to 11/1/2016. Hourly wage of \$10.72 or piece rates ranging from \$1.00 per gallon box to harvest strawberries to \$16.00 per box (1,000) to pick up, band, trim, box and load dormant strawberry plants, whichever is higher. Perform manual labor to plant, transplant, cultivate, harvest, field pack, load and unload strawberry plants, strawberries, blackberries, pumpkins, peppers, tomatoes, beans, cabbage, sweet corn, squash, watermelons and Christmas trees by hand, by machine and using hand tools. Work is outside and may be in inclement weather including extreme heat, cold, and light rain or snow. Perform repetitive bending, reaching, pushing, pulling, walking and heavy lifting and carrying up to 35 lbs. One month of experience harvesting fruits or vegetables is required.

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EVIDENTIARY HEARING

Town of
Black Mountain
Board
of Aldermen
April 21, 2016

The Town of Black Mountain Board of Adjustment will hold an evidentiary hearing on Thursday, April 21, 2016 at 6:00 p.m. in the boardroom of the Town Hall Building, 160 Midland Avenue, Black Mountain, N.C.

The purpose of this hearing is to hear an appeal of the Building Inspector.

The meeting is open to the public.

Angela Reece, Town Clerk

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4-7, 14-16
No. 34121

**NOTICE OF SERVICE
BY PUBLICATION**
IN THE GENERAL
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NOTICE OF SERVICE OF PROCESS BY PUBLICATION

IN THE GENERAL
COURT OF JUSTICE
DISTRICT COURT
DIVISION
15-CVD-4823

STATE OF
NORTH CAROLINA
COUNTY OF
BUNCOMBE

Dorothy Landford
Wambles Plaintiff

Johnny Ray Wambles
Defendant

To: Johnny Ray Wambles
Take notice that a pleading seeking relief against you has been filed in the above entitled action. The nature of relief being sought is as follows:

Absolute Divorce
You are granted to make defense to such pleading not later than 14th day of July, 2016, and upon your failure to do so, the party seeking service against you will apply to the Court for the relief sought.

This the 14th day of April, 2016

Dorothy Landford
Wambles
63 Eingham Rd.,
Lot 12
Asheville, NC 28806

4-7, 14, 21, 28-16
No. 34145

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NOTICE TO CREDITORS FILE #16-E-01615

Having qualified as Executor of the estate of Dennis Wayne Delage, late of Buncombe County, North Carolina, and this is to notify all persons and corporations having claims against the estate of said deceased to exhibit them to the undersigned on or before the 7th day of July, 2016, or this notice will be pleaded in bar of their recovery. All persons indebted to said estate will please make immediate payment to the undersigned.

This the 31st day of March, 2016

Richard D. Delage
c/o Betsy F. Matthews
Law Offices of
James M. Edmonds
P.O. Box 206
Candler, NC 28715

4-7, 14, 21, 28-16
No. 34130

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NOTICE TO CREDITORS

Having qualified as Administrator of the Estate of FRANCES P. BERGER of Asheville, Buncombe County, North Carolina, the undersigned hereby notifies all persons and corporations having claims against the estate of said decedent to exhibit them to the undersigned on or before the 17th day of July, 2016, or this notice will be pleaded in bar of their recovery. All persons indebted to the said estate will please make immediate payment to the undersigned.

This the 17th day of March, 2016

Nancy K. Hayes
Administrator of the
Estate of
Frances P. Berger
Buncombe County
Estate File # 16-E-356
Mailing Address
206 E. Chestnut St.
Asheville, NC 28801

3-24, 31-16
4-7, 14-16
No. 34091

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NOTICE TO CREDITORS

Having qualified as Administrator of the Estate of JAMES MCKINLEY, late of Buncombe County, North Carolina, the undersigned hereby notifies all persons and corporations having claims against the estate of said decedent to exhibit them to the undersigned on or before the 19th day of July, 2016, or this notice will be pleaded in bar of their recovery. All persons indebted to the said estate will please make immediate payment to the undersigned.

This the 7th day of April, 2016

Michael Lynn
Cline, Administrator
c/o Ronald Annin
Speed, 123
P.O. Box 99
Black Mountain, NC
28711

4-14, 21, 28-16
5-5-16
No. 34148

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STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

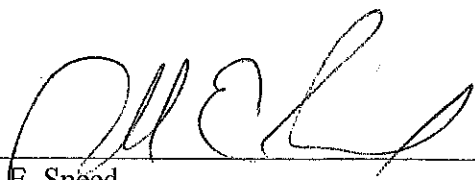
BEFORE THE ZONING BOARD OF ADJUSTMENT
FOR THE TOWN OF BLACK MOUNTAIN

In the Matter of the Appeal of)
Richard Watson and Teresa)
Watson from a decision of)
the Building Inspector)
_____)

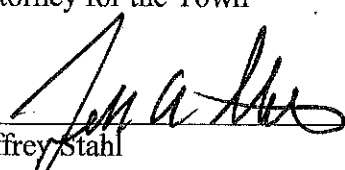
STIPULATION

The undersigned attorneys for the Town of Black Mountain and for the Appellants hereby stipulate that the documents submitted for the hearing in this matter and labeled as Town's Exhibits T-1 through T-12 and Appellant's Exhibits A-1 through A-5 are true and accurate copies of the originals and are admissible as evidence for this hearing.

This the 21st day of April, 2016.



Ronald E. Sneed
Attorney for the Town



Jeffrey Stahl
Attorney for Richard Watson and Teresa Watson

CERTIFICATE

I, Angela Reece, Town Clerk for the Town of Black Mountain, North Carolina, do hereby certify that the foregoing is a true and accurate copy of Ordinance #0-15-13 adopted at the regular meeting of the Black Mountain Board of Aldermen on September 14, 2015, and said Ordinance #0-15-13 is duly filed in the Official Records of the Town of Black Mountain dated September 14, 2015.

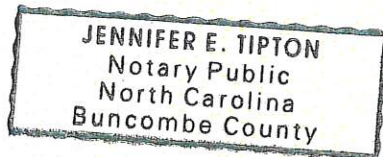


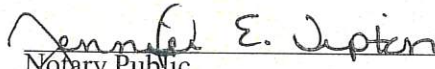
Angela Reece, Town Clerk

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, Jennifer E Tipton, a Notary Public of the aforesaid County and State, do hereby acknowledge that Angela Reece, Town Clerk of the Town of Black Mountain, North Carolina, personally appeared before me this day and acknowledged the due execution of the foregoing certificate.

WITNESS my hand and Notarial Seal, this the 18 day of April, 2016.





Notary Public
Jennifer E Tipton

Typed or Printed Name of Notary

My Commission Expires:

December 18, 2016



ORDINANCE NO. # 0-15-13

AN ORDINANCE TO ADD TEXT SECTIONS TO CHAPTER 2, SECTION 2.1.12 AND SECTION 2.1.13 NON RESIDENTIAL MAINTENANCE CODE OF THE LAND USE CODE

WHEREAS, the Town of Black Mountain Planning Board is charged with reviewing and updating land use planning, zoning, and subdivision regulations; and

WHEREAS, the Planning Board made a commitment to the Board of Aldermen to review the text of the Land Use Code in the years since its adoption to address any residual inconsistencies in the text and to look for opportunities to clarify or improve text; and

WHEREAS, upon recommendation of the Planning Board, the following text amendments are required in order to carry out vision statement three: community appearance and vision statement eight: public safety of the 2014 Comprehensive Plan;

NOW, THEREFORE the Land Use Code, Chapter 2, of the Town of Black Mountain is hereby amended with the following (additions are in bold italics and deletions are shown as red struck text):

1. Section 2.1.12

2.1.12 – Unsafe residential buildings condemned.

- A. The building inspector is appointed to exercise the powers of condemnation as provided under G.S. 160A-426—160A-443.
- B. Any residential building or manufactured home which shall appear to the building inspector to be especially dangerous to life because of its liability to fire or because of bad condition of walls, overloaded floors, defective construction, decay, unsafe wiring or heating system, inadequate means of egress, or other causes, shall be held to be unsafe, and the inspector shall affix a notice of the dangerous character of the structure to a conspicuous place on the exterior wall of said building.
- C. ~~Any non-residential building may be declared unsafe if it appears to the building inspector to be 1) vacant or abandoned or 2) in such a dilapidated condition as to cause or contribute to blight, disease, vagrancy, fire or safety hazard, to be a danger to children, or tend to attract persons intent on criminal activities or other activities which would cause a public nuisance, and the inspector shall affix a notice of the dangerous character of the structure to a conspicuous place on the exterior wall of said building.~~
- D. If after proper notification and posting the owner does not take any action to repair or rectify structures in order to address the liabilities that resulted in condemnation, the building inspector shall hold a hearing at a designated place and time at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter.

- E. Following the hearing, the building inspector may issue such order to repair, close, vacate, or demolish the structure as appears appropriate. Corrective actions and appeals shall continue to follow the procedures provided in the general statutes, including but not limited to, the town's ability to demolish structures and take a lien against the real property upon which the cost was incurred.

2. Section 2.1.13

2.1.13 A. Maintenance standards for non-residential structures.

All non-residential premises shall be maintained in a state of good repair that prevents further decay from wind, rain and external weather and secures the building from any unauthorized admittance from humans, animals or birds. All non-residential premises shall be free of nuisances and any hazards to the safety of occupants, customers or other persons utilizing the premises or to pedestrians and/or vehicles passing thereby. Without limitation of the foregoing requirement, the existence of any of the following conditions shall be deemed to be a violation of this section and must be corrected;

- (1) Such damage by fire, wind or other causes as to render the building unsafe;
- (2) Dilapidation, decay, unsanitary conditions or disrepair, which is dangerous to the health, safety and welfare of the occupants or other people in the town;
- (3) Defects significantly increasing the hazards of fire, accident or other calamities;
- (4) Buildings and environs shall be kept clear of accumulations of garbage, trash, or rubbish, which creates health and sanitation problems.
- (5) Flammable, combustibles, explosive or other dangerous or hazardous materials shall be stored in a manner approved for such materials and consistent with the town fire prevention code;
- (6) The building and environs surfaces shall be kept clear of broken glass, loose shingles, and similar hazardous conditions.
- (7) The building and environs shall be kept free of objects and elements protruding from building walls, roof and environs which are unsafe or not properly secured or which can create a hazard such as abandoned electrical boxes and conduits, wires, sign brackets and other similar objects;
- (8) Attached and unattached accessory structures shall not cause a safety hazard and shall be in good repair;
- (9) Advertising sign structures, attached or freestanding awnings, marquees and their supporting members and other similar attachments and structures shall be maintained in good repair and shall not cause a safety hazard to the occupants, pedestrians or other residents of the town;
- (10) Floors or roofs shall have adequate support members and strength to be reasonably safe;
- (11) Steps, railings, landing, porches, fire escapes or other parts or appurtenances, shall be maintained in such condition that they will not fail or collapse;

B. Investigation.

Whenever it appears to the building inspector that a nonresidential building or structure has not been properly maintained so that the safety or health of its occupants or members of the general public are jeopardized for failure of the property to meet the minimum standards established by section 2.1.13 A, the building inspector shall undertake a preliminary investigation. If entry upon the premises for purposes of investigation is necessary, such entry shall be made pursuant to a duly issued administrative search warrant or with permission of the owner, the owner's agent, a tenant, or other person legally in possession of the premises.

C. Complaint and hearing.

- (a) If the preliminary investigation discloses evidence that a building is in violation of the minimum standards, he shall issue and cause to be served upon the owner of such building a complaint stating the charges and containing a notice that a hearing will be held before the building inspector at a place and time therein fixed, not less than ten (10) nor more than thirty (30) days after the serving of said complaint. The owner shall have the right to file an answer to the complaint and to appear in person or otherwise, and give testimony at the place and time fixed in the complaint. Any person desiring to do so may attend such hearing and give evidence relevant to the matter being heard. The rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the building inspector. Following the hearing, the building inspector shall dismiss the complaint if he finds no violation; if he finds that violations of this article exist, he shall order compliance setting forth a maximum of up to 180 days within which to correct the violations. Such order shall contain an outline of remedial action which, if taken, will effect compliance and with the provisions of this article.
- (b) If the building inspector determines that the repairs, alterations or improvements necessary to bring the building into compliance with the provisions of this article can be made at the cost of less than 50 percent of the present value of the building, he shall state in writing his findings of fact in support of such determination, and shall issue and cause to be served upon the owner thereof, an order directing and requiring the owner to repair, alter and improve such building to comply with the standards contained herein.
- (c) If the building inspector determines that the repairs, alterations or improvements necessary to bring the building into compliance with the provisions of the article cannot be made at a cost of less than 50 percent of the present value of the building, he shall state in writing his findings of fact in support of such determination, and shall issue and cause to be served upon the owner thereof an order directing and requiring the owner to either repair, alter and improve such building to comply with the standards contained herein or to demolish the building. The property owner may rebut the value calculations of the building inspector by providing an appraisal of the value of the property and an estimate of repair costs provided by a qualified contractor.

D. Service of complaints and orders.

- (a) Complaints and all orders issued by the building inspector shall be served by the building inspector upon persons either personally or by registered or certified mail. When service of a complaint or order is accomplished personally or by registered or certified mail, such service is hereby deemed to be complete on the day of delivery to or receipt by the person served. When service is made by registered or certified mail, a copy of the complaint or order may also be sent by regular mail. Service shall be deemed sufficient if the registered or certified mail is unclaimed or refused, but the regular mail is not returned by the post office within ten (10) days after mailing. If regular mail is used, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected.
- (b) If the identities of any owners or the whereabouts of persons are unknown and the same cannot be ascertained by the building inspector in the exercise of reasonable diligence, or, if the owners are known but have refused to accept service by registered or certified mail and the building inspector makes an affidavit to that effect, then the serving of such complaint or order in the town at least once no later than the time at which personal services would be required under the provisions of this article. When service is made by publication, a copy of the complaint or order shall be posted in a conspicuous place on the premises affected by the complaint or order; in the case of the complaint, it must be posted at least ten (10) days prior to the hearing.

E. Failure to comply with orders.

- (a) If the owner fails to comply with an order to repair the building or structure, the building inspector may:
- (1) Cause such structure to be repaired, and pending such repairs, may order the building to be vacated and closed;
 - (2) Cause to be posted on the main entrance of any structure so closed, a placard entitled, "Notice of condemnation" with the following words:

"Notice is hereby given that this building is unsafe and dangerous condition; may constitute a fire hazard by reason of structural defects and general state of decay, deterioration and disrepair; may be hazardous or dangerous to children or members of the public generally, or may be dangerously infested with vermin, rodents or insects. Such building has been condemned under the building laws of the State of North Carolina and the Town of Black Mountain."
- (b) If the owner fails to comply with an order to remove or demolish the building, the building inspector may:
- (1) Cause such structure to be removed or demolished;
 - (2) Cause to be posted, pending demolition, on the main entrance of any structure so closed, a placard entitled, "Notice of condemnation" with the following words:

"Notice is hereby given that this building is unsafe and dangerous condition; may constitute a fire hazard by reason of structural defects and general state of decay, deterioration and disrepair; may be hazardous or dangerous to children or members of the public generally, or may be dangerously infested with vermin, rodents or insects. Such building has been condemned under the building laws of the State of North Carolina and the Town of Black Mountain."

- (c) The duties of the building inspector set forth in subsections (a) and (b) shall not be exercised until:
- (1) The town attorney shall institute in the general court of justice an appropriate action to seek an order of the court directing such owner to comply with the order of the building inspector; or
 - (2) The building inspector shall request the board to order him by an ordinance specifically describing the subject property to do either of the following:
 - a. To cause such building to be repaired, altered and improved to comply with the standards established by this article; or
 - b. To cause such building to be vacated, closed, and removed or demolished. The board, in ordering one of the aforesaid alternatives, shall order the specific action that will best effectuate the purposes of this article. Once the ordinance is adopted by the board a true copy of such ordinance shall be recorded in the office of the register of deeds of the county and the registrar shall index the name of the property owner in the "grantor index."
- (d) The amount of the cost of repairs, alterations and improvements, or vacating, closing and removal or demolition shall be a lien against the real property upon which the cost was incurred. Such lien shall be filed, have the same priority and be collected as the lien for special assessment provided in Article 10, Chapter 160A of the North Carolina General Statutes. If the unsafe building is removed or demolished by the building inspector, he shall, if possible, sell in any commercially reasonable manner the materials of the unsafe building and shall credit the proceeds of the sale, if any, against the cost of the removal or demolition. Any balance remaining shall be deposited by the building inspector with the clerk of superior court for subsequent disbursement by the court to the persons found by the court to be entitled thereto.
- (e) Nothing in this section shall be construed to impair or limit in any way the power of the town to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise, nor shall enforcement of one remedy provided herein prevent the enforcement of any other remedies provided herein or otherwise.
- (f) Nothing in this section shall be construed to impair or limit in any way the power of the building inspector in the proper enforcement of the duties of his office, as assigned, nor shall the enforcement of one remedy provided herein prevent the enforcement of any other remedies provided herein or otherwise.

F. Appeals.

- (a) An appeal from any decision or order of the building inspector pursuant to this article may be taken by any person aggrieved thereby. Any appeal from the building inspector in which the decision of the building inspector is a violation of the state building code shall be taken within ten (10) days of receipt of such order in writing, with such appeal to be to the Department of Insurance. All other appeals shall be taken by filing with the zoning board of adjustment (hereinafter called "ZBA") a notice of appeal within thirty (30) days from date of receipt of the building inspector's decision in writing, and such notice of appeal shall specify the grounds upon which the appeal is based. Upon the filing of any notice of appeal, the building inspector shall forthwith transmit to the ZBA all the papers constituting the record upon which the decision appealed from was made. When an appeal is from a decision of the building inspector refusing to allow the person aggrieved thereby to do any act, his decision shall remain in force until modified or reversed. When any appeal is from a decision of the building inspector requiring the person aggrieved to do any act, the appeal shall have the effect of suspending the requirement until the hearing by the ZBA, unless the building inspector certifies to the board after the notice of appeal is filed with him, that by reason of the facts stated in the certificate (a copy of which shall be furnished to the appellant), a suspension of his requirement would cause imminent peril to life or property. In that case, the requirement shall not be suspended except by a restraining order, which may be granted for due cause upon not less than five (5) days' written notice by a court of record. All regulations, fees and other rules of the ZBA shall apply to these appeals.
- (b) The ZBA shall fix a reasonable time for the hearing of all appeals, shall give due notice to all the parties, and shall render its decision within a reasonable time. Any party may appear in person or by agent or attorney. The ZBA may reverse or affirm wholly or partly, or may modify the decision or order appealed from, and may make such decision and order as in its opinion ought to be made in the matter, and to that end it shall have all the powers of the building inspector, but the majority vote of the members of the ZBA shall be necessary to reverse or modify any decision or order of the building inspector. The ZBA shall have power also in passing upon appeals, in any case where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance, to adapt the application of the ordinance to the necessities of the case to the end that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done.
- (c) If the building is in the historic preservation district, or has been determined by the Historic Preservation Commission to be a historic structure, the ZBA may enter an order holding the matter in abeyance provided that the owner repairs the building on a timely basis. Such repairs shall commence within six (6) months of the ZBA's order and shall be completed within two (2) years of said date. All such repairs shall be completed in such a way as to maintain the historic character of the building and shall comply with the United States Secretary of Interior standards for the treatment of historic rehabilitation and the rules and guidelines of the Black Mountain Historic Preservation Commission. If the repairs are not commenced and completed

within the time periods set out in the order, the building inspector shall proceed to enforce his original order.

- (d) Every decision of the ZBA shall be subject to review by the county superior court by proceedings in the nature of certiorari instituted within thirty (30) days of the receipt of the written decision of the ZBA.

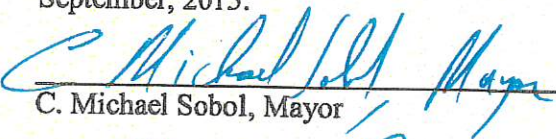
G. Violations and penalties.

- (a) It shall be unlawful for the owner of any building to fail, neglect, or refuse to repair, alter, and improve the same; or to fail to vacate, close and remove or demolish the same, upon order of the building inspector duly made and served as herein provided, within the time specified in such order, and each day that any such failure, neglect, or refusal to comply with such order continues shall constitute a separate and distinct offense. It shall be unlawful for the owner of any building with respect to which an order has been issued pursuant to this article to occupy or permit the occupancy of the same after the time prescribed in such order for its repair, alteration and improvement or its vacation, closing and removal or demolition, and each day that such occupancy continues after such prescribed time shall constitute a separate and distinct offense.
- (b) Any owner of a building who fails to comply with any order described in subsection (a), or who allows occupancy of the building subject to such order after the compliance period in the order has expired, shall be subject to a civil penalty of \$500.00 for each day that noncompliance continues following the expiration of the compliance period specified in the order of compliance. If a person fails to pay the civil penalty within ten (10) days of the citation, the town may seek to collect it in a civil action in the nature of a debt.
- (c) Each day that a violation continues after notification that such violation exists shall constitute a separate and distinct offense for purposes of the penalties and remedies set forth in this section.
- (d) This article may be enforced by any appropriate equitable action.
- (e) This article may be enforced by any one, or any combination of the remedies authorized in this section.

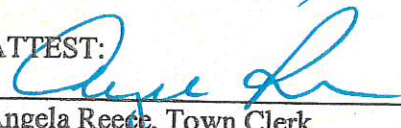
H. This ordinance shall become effective ninety (90) days after its adoption

Reserved.

READ, APPROVED AND ADOPTED, by a vote of 5 to 0, this the 14th day of September, 2015.

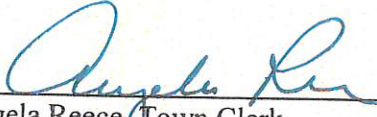

C. Michael Sobol, Mayor

ATTEST:


Angela Reece, Town Clerk

CERTIFICATE

I, Angela Reece, Town Clerk for the Town of Black Mountain, North Carolina, do hereby certify that the foregoing is a true and accurate copy of Sections 2.1.13 of the Land Use Code as codified and contained in Appendix A: Land Use Code, of the Code of Ordinances for the Town of Black Mountain.

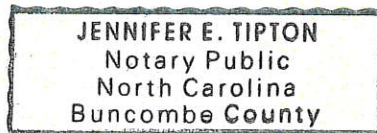


Angela Reece, Town Clerk

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, Jennifer E Tipton, a Notary Public of the aforesaid County and State, do hereby acknowledge that Angela Reese, Town Clerk of the Town of Black Mountain, North Carolina, personally appeared before me this day and acknowledged the due execution of the foregoing certificate.

WITNESS my hand and Notarial Seal, this the 20 day of April, 2016.





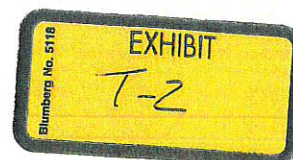
Notary Public

Jennifer E Tipton

Typed or Printed Name of Notary

My Commission Expires:

December 18, 2016



- (5) Flammable, combustibles, explosive or other dangerous or hazardous materials shall be stored in a manner approved for such materials and consistent with the town fire prevention code;
- (6) The building and environs surfaces shall be kept clear of broken glass, loose shingles, and similar hazardous conditions;
- (7) The building and environs shall be kept free of objects and elements protruding from building walls, roof and environs which are unsafe or not properly secured or which can create a hazard such as abandoned electrical boxes and conduits, wires, sign brackets and other similar objects;
- (8) Attached and unattached accessory structures shall not cause a safety hazard and shall be in good repair;
- (9) Advertising sign structures, attached or freestanding awnings, marquees and their supporting members and other similar attachments and structures shall be maintained in good repair and shall not cause a safety hazard to the occupants, pedestrians or other residents of the town;
- (10) Floors or roofs shall have adequate support members and strength to be reasonably safe;
- (11) Steps, railings, landing, porches, fire escapes or other parts or appurtenances, shall be maintained in such condition that they will not fail or collapse.

B. *Investigation.* Whenever it appears to the building inspector that a nonresidential building or structure has not been properly maintained so that the safety or health of its occupants or members of the general public are jeopardized for failure of the property to meet the minimum standards established by subsection A, the building inspector shall undertake a preliminary investigation. If entry upon the premises for purposes of investigation is necessary, such entry shall be made pursuant to a duly issued administrative search warrant or with permission of the owner, the owner's agent, a tenant, or other person legally in possession of the premises.

C. *Complaint and hearing.*

- (a) If the preliminary investigation discloses evidence that a building is in violation of the minimum standards, he shall issue and cause to be served upon the owner of such building a complaint stating the charges and containing a notice that a hearing will be held before the building inspector at a place and time therein fixed, not less than ten nor more than 30 days after the serving of said complaint. The owner shall have the right to file an answer to the complaint and to appear in person or otherwise, and give testimony at the place and time fixed in the complaint. Any person desiring to do so may attend such hearing and give evidence relevant to the matter being heard. The rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the building inspector. Following the hearing, the building inspector shall dismiss the complaint if he finds no violation; if he finds that violations of this article exist, he shall order compliance setting forth a maximum of up to 180 days

within which to correct the violations. Such order shall contain an outline of remedial action which, if taken, will effect compliance and with the provisions of this article.

- (b) If the building inspector determines that the repairs, alterations or improvements necessary to bring the building into compliance with the provisions of this article can be made at the cost of less than 50 percent of the present value of the building, he shall state in writing his findings of fact in support of such determination, and shall issue and cause to be served upon the owner thereof, an order directing and requiring the owner to repair, alter and improve such building to comply with the standards contained herein.
- (c) If the building inspector determines that the repairs, alterations or improvements necessary to bring the building into compliance with the provisions of the article cannot be made at a cost of less than 50 percent of the present value of the building, he shall state in writing his findings of fact in support of such determination, and shall issue and cause to be served upon the owner thereof an order directing and requiring the owner to either repair, alter and improve such building to comply with the standards contained herein or to demolish the building. The property owner may rebut the value calculations of the building inspector by providing an appraisal of the value of the property and an estimate of repair costs provided by a qualified contractor.

D. Service of complaints and orders.

- (a) Complaints and all orders issued by the building inspector shall be served by the building inspector upon persons either personally or by registered or certified mail. When service of a complaint or order is accomplished personally or by registered or certified mail, such service is hereby deemed to be complete on the day of delivery to or receipt by the person served. When service is made by registered or certified mail, a copy of the complaint or order may also be sent by regular mail. Service shall be deemed sufficient if the registered or certified mail is unclaimed or refused, but the regular mail is not returned by the post office within ten days after mailing. If regular mail is used, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected.
- (b) If the identities of any owners or the whereabouts of persons are unknown and the same cannot be ascertained by the building inspector in the exercise of reasonable diligence, or, if the owners are known but have refused to accept service by registered or certified mail and the building inspector makes an affidavit to that effect, then the serving of such complaint or order in the town at least once no later than the time at which personal services would be required under the provisions of this article. When service is made by publication, a copy of the complaint or order shall be posted in a conspicuous place on the premises affected by the complaint or order; in the case of the complaint, it must be posted at least ten days prior to the hearing.

E. Failure to comply with orders.

- (a) If the owner fails to comply with an order to repair the building or structure, the building inspector may:
 - (1) Cause such structure to be repaired, and pending such repairs, may order the building to be vacated and closed;
 - (2) Cause to be posted on the main entrance of any structure so closed, a placard entitled, "Notice of condemnation" with the following words:

"Notice is hereby given that this building is unsafe and dangerous condition; may constitute a fire hazard by reason of structural defects and general state of decay, deterioration and disrepair; may be hazardous or dangerous to children or members of the public generally, or may be dangerously infested with vermin, rodents or insects. Such building has been condemned under the building laws of the State of North Carolina and the Town of Black Mountain."
- (b) If the owner fails to comply with an order to remove or demolish the building, the building inspector may:
 - (1) Cause such structure to be removed or demolished;
 - (2) Cause to be posted, pending demolition, on the main entrance of any structure so closed, a placard entitled, "Notice of condemnation" with the following words:

"Notice is hereby given that this building is unsafe and dangerous condition; may constitute a fire hazard by reason of structural defects and general state of decay, deterioration and disrepair; may be hazardous or dangerous to children or members of the public generally, or may be dangerously infested with vermin, rodents or insects. Such building has been condemned under the building laws of the State of North Carolina and the Town of Black Mountain."
- (c) The duties of the building inspector set forth in subsections (a) and (b) shall not be exercised until:
 - (1) The town attorney shall institute in the general court of justice an appropriate action to seek an order of the court directing such owner to comply with the order of the building inspector; or
 - (2) The building inspector shall request the board to order him by an ordinance specifically describing the subject property to do either of the following:
 - a. To cause such building to be repaired, altered and improved to comply with the standards established by this article; or
 - b. To cause such building to be vacated, closed, and removed or demolished. The board, in ordering one of the aforesaid alternatives, shall order the specific action that will best effectuate the purposes of this article. Once the ordinance is adopted by the board a true copy of such ordinance shall

be recorded in the office of the register of deeds of the county and the registrar shall index the name of the property owner in the "grantor index."

- (d) The amount of the cost of repairs, alterations and improvements, or vacating, closing and removal or demolition shall be a lien against the real property upon which the cost was incurred. Such lien shall be filed, have the same priority and be collected as the lien for special assessment provided in G.S. ch. 160A, art. 10. If the unsafe building is removed or demolished by the building inspector, he shall, if possible, sell in any commercially reasonable manner the materials of the unsafe building and shall credit the proceeds of the sale, if any, against the cost of the removal or demolition. Any balance remaining shall be deposited by the building inspector with the clerk of superior court for subsequent disbursement by the court to the persons found by the court to be entitled thereto.
- (e) Nothing in this section shall be construed to impair or limit in any way the power of the town to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise, nor shall enforcement of one remedy provided herein prevent the enforcement of any other remedies provided herein or otherwise.
- (f) Nothing in this section shall be construed to impair or limit in any way the power of the building inspector in the proper enforcement of the duties of his office, as assigned, nor shall the enforcement of one remedy provided herein prevent the enforcement of any other remedies provided herein or otherwise.

F. Appeals.

- (a) An appeal from any decision or order of the building inspector pursuant to this article may be taken by any person aggrieved thereby. Any appeal from the building inspector in which the decision of the building inspector is a violation of the state building code shall be taken within ten days of receipt of such order in writing, with such appeal to be to the department of insurance. All other appeals shall be taken by filing with the zoning board of adjustment (hereinafter called "ZBA") a notice of appeal within 30 days from date of receipt of the building inspector's decision in writing, and such notice of appeal shall specify the grounds upon which the appeal is based. Upon the filing of any notice of appeal, the building inspector shall forthwith transmit to the ZBA all the papers constituting the record upon which the decision appealed from was made. When an appeal is from a decision of the building inspector refusing to allow the person aggrieved thereby to do any act, his decision shall remain in force until modified or reversed. When any appeal is from a decision of the building inspector requiring the person aggrieved to do any act, the appeal shall have the effect of suspending the requirement until the hearing by the ZBA, unless the building inspector certifies to the board after the notice of appeal is filed with him, that by reason of the facts stated in the certificate (a copy of which shall be furnished to the appellant), a suspension of his requirement would cause imminent peril to life or property. In that case, the requirement shall not be suspended except by a

restraining order, which may be granted for due cause upon not less than five days' written notice by a court of record. All regulations, fees and other rules of the ZBA shall apply to these appeals.

- (b) The ZBA shall fix a reasonable time for the hearing of all appeals, shall give due notice to all the parties, and shall render its decision within a reasonable time. Any party may appear in person or by agent or attorney. The ZBA may reverse or affirm wholly or partly, or may modify the decision or order appealed from, and may make such decision and order as in its opinion ought to be made in the matter, and to that end it shall have all the powers of the building inspector, but the majority vote of the members of the ZBA shall be necessary to reverse or modify any decision or order of the building inspector. The ZBA shall have power also in passing upon appeals, in any case where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance, to adapt the application of the ordinance to the necessities of the case to the end that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done.
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- (d) Every decision of the ZBA shall be subject to review by the county superior court by proceedings in the nature of certiorari instituted within 30 days of the receipt of the written decision of the ZBA.

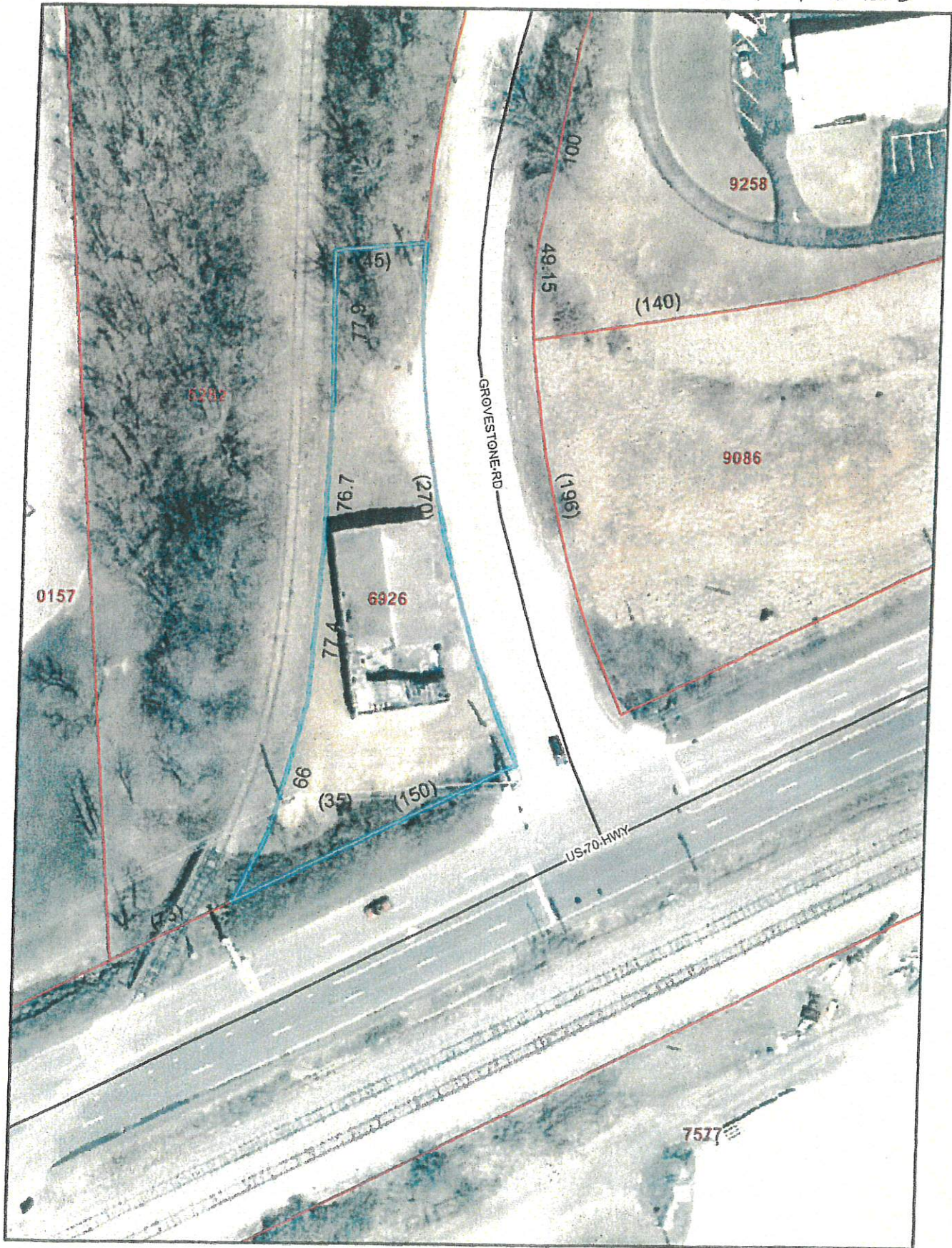
G. Violations and penalties.

- (a) It shall be unlawful for the owner of any building to fail, neglect, or refuse to repair, alter, and improve the same; or to fail to vacate, close and remove or demolish the same, upon order of the building inspector duly made and served as herein provided, within the time specified in such order, and each day that any such failure, neglect, or refusal to comply with such order continues shall constitute a separate and distinct offense. It shall be unlawful for the owner of any building with respect to which an order has been issued pursuant to this article to occupy or permit the occupancy of the same after the time prescribed in such order for its repair, alteration and improvement or its vacation, closing and removal or demolition, and each day that such occupancy continues after such prescribed time shall constitute a separate and distinct offense.

- (b) Any owner of a building who fails to comply with any order described in subsection (a), or who allows occupancy of the building subject to such order after the compliance period in the order has expired, shall be subject to a civil penalty of \$500.00 for each day that noncompliance continues following the expiration of the compliance period specified in the order of compliance. If a person fails to pay the civil penalty within ten days of the citation, the town may seek to collect it in a civil action in the nature of a debt.
 - (c) Each day that a violation continues after notification that such violation exists shall constitute a separate and distinct offense for purposes of the penalties and remedies set forth in this section.
 - (d) This article may be enforced by any appropriate equitable action.
 - (e) This article may be enforced by any one, or any combination of the remedies authorized in this section.
- H. This section shall become effective 90 days after its adoption.
(Ord. No. O-15-13, § 2, 9-14-2015)

Buncombe County Map

0609-01-6926



25 50 100 Feet

EXHIBIT
7-3





**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 6, 2015

Richard & Teresa Watson
5 Watson Road
Swannanoa, NC 28778

Dear Mr. & Mrs. Watson,

This correspondence is in regards to property you own at 1599 Grovestone Road, PIN #0609-01-6926, in the Town of Black Mountain, N.C.

On September 14, 2015, the Board of Aldermen unanimously passed an ordinance regarding maintenance of non-residential structures within the Town of Black Mountain. As such, all non-residential premises shall be maintained in a state of good repair and any of the following items may constitute a violation of this ordinance and must be corrected:

1. Such damage by fire, wind or other causes as to render the building unsafe;
- ② Dilapidation, decay, unsanitary conditions or disrepair, which is dangerous to the health, safety and welfare of the occupant or other people in the town;
- ③ Defects significantly increasing the hazards of fire, accident or other calamities;
4. Buildings and environs shall be kept clear of accumulations of garbage, trash, or rubbish, which creates a health and sanitation problems;
5. Flammable, combustibles, explosive or other dangerous or hazardous materials shall be stored in a manner approved for such materials and consistent with the town fire prevention code;
- ⑥ The building and environ surfaces shall be kept clear of broken glass, loose shingles, and similar hazardous conditions;
7. The building and environs shall be kept free of objects and elements protruding from building walls, roof and environs which are unsafe and not properly secured or which can create a hazard such as abandoned electrical boxes and conduits, wires, sign brackets and other similar objects;
8. Attached and unattached accessory structures shall not cause a safety hazard and shall be in good repair;
9. Advertising sign structures, attached or freestanding awnings, marquees and their supporting members and other similar attachments and structures shall be maintained in good repair and shall not cause a safety hazard to the occupants, pedestrians or other residents of the town;
- ⑩ Floors or roofs shall have adequate support members and strength to be reasonably safe; and



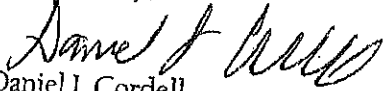
11. Steps, railings, landings, porches, fire escapes or other parts or appurtenances, shall be maintained in such condition that they will not fail or collapse.

Your building is currently in violation of items #2, #3, #6 and #10 and N.C.G.S. 160A-426, Unsafe Buildings.

We are giving you fifteen (15) days to come into compliance with the non-residential maintenance code. If no work has been done after the fifteen (15) days, then a notice of violation will be issued.

If you have any questions, you may contact our office at (828) 419-9300 ext. 604.

Respectfully,



Daniel I. Cordell
Building Inspector



**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

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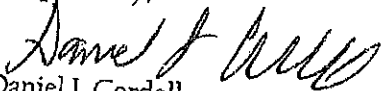
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Building Inspector