

**TOWN OF BLACK MOUNTAIN
BOARD OF ADJUSTMENT**

The Black Mountain Board of Adjustment held its regular meeting on Thursday, November 16, 2023, at 6:00 p.m. in Town Hall at 160 Midland Avenue, Black Mountain, North Carolina.

I. CALL TO ORDER

The meeting was called to order with the following members present:

Lauren Dodgin, Chair
Larry Pearlman, Vice Chair
Chloe Riddle
Andy Homrich
John Hines, Alternate
Nicole Stallings, Alternate

Absent:

Ben Cooper

Staff:

Jennifer Tipton, Senior Admin
Russell Cate, Planner I/Zoning Administrator

The meeting was called to order at 6:00 p.m. and duly constituted and opened for business with a quorum of four (4) regular members and one (1) alternate.

II. ADOPTION OF AGENDA

Jennifer Tipton announced that the appeal of the Zoning Administrator's decision has been pulled from the agenda per the Town Attorney. Lauren Dodgin made a motion to adopt the agenda as amended. The motion was seconded by Larry Pearlman and approved by a vote 5-0.

III. ADOPTION OF MINUTES

Andy Homrich made a motion to adopt the minutes of October 19, 2023, as written. The motion was approved by a vote of 5-0.

IV. OLD BUSINESS

None.

V. NEW BUSINESS

Lauren Dodgin read the opening statement. All members stated that they had no exparte communications. Larry Pearlman noted that he did drive by the structure at 710 Laurel Avenue.

Jennifer Tipton swore in all persons with standing and wishing to speak.

1. Approval of Order for Sweet Birch Commons SUP Amendment

Andy Homrich made a motion to approve the order as written. The motion was approved by a vote of 5-0.

2. Variance Request – 710 Laurel Avenue

Russell Cate gave a brief summary of the variance request. The applicant is seeking to reduce the side setback from ten feet to five feet to convert a standalone garage into habitable space and

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attach it to the existing primary structure. The garage is four hundred and eighty square feet and is proposed to have two bedrooms and one bath and have a ninety-six square area that would connect the structures. The existing structure is nine hundred and forty-eight square feet with two bedrooms and one and a half baths. The lot is .31 acres with little slope and no stream or floodplain or floodway. Staff did confirm that the existing garage is five feet from the property line. The house was constructed in 1943 and the garage was constructed in 1950. Larry Pearlman asked if five feet were removed from the structure, then the structure would be conforming, and Mr. Cate confirmed that was correct. Chair Lauren Dodgin asked if the structures had been connected at the time the garage was constructed, would it require a variance and Mr. Cate explained that it would be a legal non-conforming structure at that point. Alternate John Hines asked if there were zoning laws in 1950 and Jennifer Tipton explained that the Town's zoning laws did not come into effect until 1977. Mr. Hines asked if the structure could be built to today's standards and Mr. Cate explained that it could be built as an accessory structure five feet from the property line.

Steve Parrish, PO Box 704, is the general contractor for the applicants and is acting as their representative. Mr. Parrish explained that the structure has not been used as a garage in forty years and has been used as a workshop. Mr. Cate explained that a workshop is still an accessory structure, so the change of use still exists. Mr. Parrish explained that the applicants approached him about adding onto the home and Mr. Parrish explained that to put in an addition, several big trees would have to be removed and it would be an unnecessary expense to demolish the garage to build an addition and remove the trees to be able to avoid the roots. Mr. Parrish asked if the variance would apply only to the area requested or if the variance would be for the entire lot. Ms. Tipton explained that the board has the option to add conditions if they feel the area of the variance needs to be greater. Mr. Parrish said the work would be architecturally compatible with the existing structure. Mr. Parrish said that if the structure were to be demolished, they would have to remove a slab that would also tear out the roots of the existing trees and require they be removed. Mr. Parrish said that if five feet were removed from the structure, it would not look right due to the roof line and he is not sure if the building inspector would approve that since they will have to have new footers. The owners have owned the property since the 1980's. The structure will not be a separate dwelling and will become a four-bedroom home. The ninety-six square foot area will be a hallway/corridor connection between the structures. Mr. Parrish said that being able to use the existing structure will cause less disturbance and keep less material out of the landfill.

Kevin Brandon, 1184 Old US 70 Hwy, said that his parents purchased the property adjacent to the subject property and at that time, the property was not inside the Town limits and the first thing that they did was put in a garage five feet from the property line. Mr. Brandon said he is not sure if the accessory structure on the subject property was actually built in 1950. Mr. Brandon said that Mr. Parrish does a great job with construction and has built some other structures in the surrounding area. Mr. Brandon asked if an addition were to be added at a later date, would it be able to be five feet from the property line and Mr. Cate said that legally non-conforming structures can be added onto. Mr. Brandon asked how residents would be notified of the decision of the variance request and Ms. Tipton explained that an order would be mailed to the applicant and anyone else who would like a copy. Mr. Brandon asked if someone were to come in a year from now and want to add on, would they require a variance and Ms. Tipton

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explained that if they were to add on, they would be expanding the non-conformity and would require another variance but if they were going to add a detached accessory structure then a variance would not be required. Mr. Brandon said he is worried about other neighbors wanting variances and Ms. Tipton explained that each variance application is considered on a case-by-case basis.

There was no rebuttal from staff, the applicant, or parties with standing.

Staff did not have any closing statements.

Steve Parrish said that he would like to ask for a variance of sixty-two inches rather than sixty inches due to the closeness of a tree and he would like to ask for more and be safe.

There were no closing statements from parties with standing.

The board went into recess at 6:47 p.m. The board discussed older neighborhoods that were created before the zoning requirements were put into place. It was also discussed about causing detriment to the neighborhood by removing the large established trees. The board discussed adding a condition that the variance only be for the side for the garage and no other area. There was discussion about the difference between having someone in a habitable dwelling that is five feet from the property line rather than a garage or accessory structure.

Jennifer Tipton summarized the evidence.

Town Evidence #1: Staff Report

Town Evidence #2: Variance Application

Town Evidence #3: Site Plan

Town Evidence #4: Buffer Map

Town Evidence #5: List of Property Owners within 200 Feet

Town Evidence #6: Notice of Variance Request to Property Owners

Town Evidence #7: Aerial Map

Town Evidence #8: Ordinance Section 4.7.15

Town Evidence #9: Legal Notice

Larry Pearlman made a motion to close the evidentiary hearing. The motion was approved by a vote of 5-0.

The board found the following:

1. There are unnecessary hardships that result from the strict application of the ordinance because of the age of the neighborhood and structures and that they existed prior to zoning being adopted by the Town of Black Mountain and it would be unfair to ask the applicant to tear down an existing structure just to rebuild a structure in nearly the same place.
2. The hardship does result from conditions that are peculiar to the property as the neighborhood is an older neighborhood that had different setbacks at the time the structures were built, and they were legally built at that time.

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3. The hardship does not result from actions taken by the applicant as the structures were built prior to the applicant owning the property.
4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured and substantial justice is achieved as it will allow the applicants to make use of an existing structure and they are not asking to build directly on the property line and the change of use is the least obtrusive change and reduces safety for the neighborhood by not having to demolish a structure and remove large trees.

Chair Lauren Dodgin made a motion to grant the variance reducing the side setback from ten feet to four feet ten inches with the condition that the variance be solely for the existing accessory structure and cannot expand beyond the existing line and must be connected to the primary structure to make one primary dwelling structure. The motion was approved by a vote of 5-0.

VI. COMMUNICATION FROM BOARD OF ADJUSTMENT

None.

VII. COMMUNICATION FROM STAFF

Jennifer Tipton said that she does think there will be a meeting in December, but she will let everyone know closer to time.

VIII. ADJOURNMENT

With no further business, the meeting was adjourned at 7:05 p.m.

Prepared by:

Lauren Dodgin
Lauren Dodgin, Chair

Jennifer Tipton
Jennifer Tipton, Senior Admin