



TOWN OF BLACK MOUNTAIN

160 Midland Avenue ♦ Black Mountain ♦ N.C. ♦ 28711

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

MEMORANDUM

To: Town of Black Mountain Board of Adjustment
From: Jennifer Tipton, Senior Admin
Re: Agenda Packet for January 18, 2024
Date: January 5, 2024

The **Town of Black Mountain Board of Adjustment** will meet on **Thursday, January 18, 2024, at 6:00 p.m.** in Town Hall at 160 Midland Avenue.

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

1. The proposed agenda;
2. Draft minutes from November 16, 2023; and
3. Variance Order for 710 Laurel Avenue.

Please let Jennifer Tipton know if you are **unable** to attend this meeting.
jennifer.tipton@tobm.org or (828) 419-9371.

The Town of Black Mountain is committed to providing accessible facilities, programs and services for all people in compliance with the American with Disabilities Act. Should you need assistance or a particular accommodation for this meeting, please inform Jennifer Tipton at (828) 419-9371 or by email at jennifer.tipton@tobm.org.

CC: Jessica Trotman, Planning Director
Russell Cate, Planner 1/Zoning Administrator



PUBLIC NOTICE **AVISO PÚBLICO**

BLACK MOUNTAIN BOARD OF ADJUSTMENT

REGULAR MEETING **REUNIÓN ORDINARIA**

Thursday, January 18, 2024, at 6:00 p.m.
Jueves 18 de Enero de 2024, a las 6:00 p.m.

The Black Mountain Board of Adjustment will meet for their monthly meeting on **Thursday, January 18, 2024, at 6:00 p.m.** at Town Hall, 160 Midland Avenue, Black Mountain, N.C.

La Junta de Ajuste de Black Mountain se reunirá para su reunión mensual **el jueves 18 de Enero de 2024 a las 6:00 p.m.** en Town Hall, 160 Midland Avenue, Black Mountain, N.C.

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

Jennifer Tipton
Senior Admin

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La ciudad de Black Mountain se compromete a proporcionar instalaciones, programas y servicios accesibles para todas las personas en cumplimiento con la Ley de Estadounidenses con Discapacidades (ADA). Si necesita ayuda o un alojamiento en particular para esta reunión, comuníquese con Jennifer Tipton al (828) 419-9371 o por correo electrónico a Jennifer.tipton@tobm.org.

Posted to the Town Bulletin Board 01/04/2024
www.townofblackmountain.org



**Board of Adjustment Regular Meeting
January 18, 2024**

PROPOSED AGENDA

I. CALL TO ORDER

- Welcome
- Determination of Quorum

II. ADOPTION OF AGENDA

- **Motion:** To adopt the agenda as presented [or as amended]

III. ADOPTION OF MINUTES

- **Motion:** To adopt the minutes of November 16, 2023, as written [or as amended]

IV. OLD BUSINESS

V. NEW BUSINESS

- Approval of Variance Order for 710 Laurel Avenue

VI. COMMUNICATION FROM ZONING BOARD OF ADJUSTMENT

VII. COMMUNICATION FROM STAFF

VIII. ADJOURNMENT

**TOWN OF BLACK MOUNTAIN
BOARD OF ADJUSTMENT**

The Black Mountain Board of Adjustment held its regular meeting on Thursday, November 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 taking by the applicant as the structures were built prior to the applicants 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, Chair

Jennifer Tipton, Senior Admin

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November 16, 2023

TOWN OF BLACK MOUNTAIN
COUNTY OF BUNCOMBE

BFORE THE BLACK MOUNTAIN
BOARD OF ADJUSTMENT

In the Matter of the Application of)
Tim and Sheila Eastman for a)
Variance for Property at 710 Laurel Avenue)
PIN #0619-09-9258.00000)
_____)

ORDER

THIS CAUSE, coming on before the Board of Adjustment for the Town of Black Mountain on November 16, 2023, upon the application of Tim and Sheila Eastman for a setback variance to reduce the side property line of ten feet to four feet and ten inches to convert the existing accessory structure into habitable space on the property at 710 Laurel Avenue in Black Mountain, PIN #0619-09-9258.00000, which is Lot 19 and 20, Plat Book 0010 at Page 0027, Buncombe County Registry.

Steve Parrish, general contractor, appeared to present the case for Tim and Sheila Eastman.

Jennifer Tipton, Senior Administrative Assistant, and Russell Cate, Planner I/Zoning Administrator, appeared for the Town staff, and five members of the Board of Adjustment were in attendance.

The Board of Adjustment, having heard and considered the testimony of Town staff and the Applicant, and having considered all the evidence presented by the Town staff and the Applicant, statements made by members of the public in attendance, and statements and arguments of the Applicant, makes the following:

FINDINGS OF FACT

1. The Board of Adjustment has jurisdiction over this matter pursuant to Section 1.7.3 of the Land Use Code (the "LUC").
2. Proper notice of this meeting and hearing of the Board of was provided as required by the Town ordinances and the state law.
3. Applicants are owners of the property located at 710 Laurel Avenue, Black Mountain, North Carolina, which has the current PIN number of 0619-09-9258.00000 as shown on the Buncombe County tax maps, also being Lot 19 and 20, Plat Book 0010 at Page 0027, Buncombe County Registry.
4. The property is zoned UR-8.
5. In the UR-8 zoning district, there are building setbacks established in the Land Use Code of 10 feet for location of structures with habitable space from the side property line

(Section 4.6.3.3 of the LUC) except that accessory structures may be located five feet or more from side or rear property lines. (Section 4.5.4 (A) of the LUC.)

6. There is an existing 480 square foot accessory structure on the property, which was constructed in 1950, prior to the adoption of the existing Land Use Code, which is located approximately five feet from the north property line.
7. The Applicants desire to convert the accessory structure into habitable space with two bedrooms and one bathroom.
8. The Applicants proposed to have a 96 square foot addition to connect the accessory structure to the existing primary structure.
9. The accessory structure on the property is located on the lot so that it meets the setback requirements, but too close to the side lot line to allow for conversion to habitable space.
10. There are several large trees that would have to be removed along with the roots if the accessory structure were to be demolished and a new structure constructed.
11. To be granted a variance, the Applicant is required to prove all of the following:
 - 1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
 - 2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
 - 3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
 - 4) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved. (N.C.G.S Section 160D-705; Section 1.7.3 (E) of the LUC.)
12. The setback requirements of the ordinance, if strictly enforced, will be an unnecessary hardship for the Applicants, as it will prohibit them from converting a legal accessory structure into habitable space on their property because the structures were built prior to the enactment of zoning in the Town.
13. The hardship results from conditions that are peculiar to the property, as the neighborhood is older and had different setback requirements at the time the accessory structure was built.

14. The hardship did not result from actions taken by the Applicants or the property owner, as the structures were built prior to the Applicants owning the property.
15. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved, as the variance, if granted, will allow the applicant to make use of an existing structure, will not be adding any structures on the property line, will be more safe than the demolishing of a structure and removal of several large trees, and the change of use of the structure is the least obtrusive change.

BASED ON THE FOREGOING FINDINGS OF FACT, this Board, by a vote of 5-0, concludes that the Applicant should be granted a variance to reduce the side setback for the structure on the north boundary of the property to four feet ten inches to allow the conversion of the accessory structure into habitable space as long as the structure is not increase any more long the north and east boundaries and the accessory structure and the primary structure are connected to make one primary dwelling.

IT IS NOW, THEREFORE, ORDERED, that the Applicants are granted a variance reducing the side setback for the accessory structure on the north side of the lot at 710 Laurel Avenue to 4 feet 10 inches, subject to the conditions that the structure not be enlarged on the north or east boundaries and that the accessory structure and primary structure be connected to make one primary dwelling.

This the _____ day of _____, 2023.

LAUREN DODGIN, Chairperson

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