TOWN OF BLACK MOUNTAIN
BOARD OF ADJUSTMENT

The Black Mountain Board of Adjustment held its regular meeting on Thursday, March 21, 2024, 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
Nicole Stallings, Alternate
Linda Brinson, Alternate

Absent:

Ben Cooper
John Hines, Alternate

Staff:

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

The meeting was called to order at 5:59 p.m. and duly constituted and opened for business with a quorum of four (4) regular members and two (2) alternates.

II. ADOPTION OF AGENDA

Larry Pearlman made a motion to adopt the agenda as presented. The motion was approved by consensus with a vote of 5-0.

III. ADOPTION OF MINUTES

Larry Pearlman made a motion to adopt the minutes of January 18, 2024, as written. The motion was approved by consensus with a vote of 5-0.

IV. OLD BUSINESS

None.

V. NEW BUSINESS

Larry Pearlman stated that he had driven by the property subject to the variance request. There was no other ex parte communications from the board.

Jennifer Tipton administered the oath to all persons wishing to testify.

1. <u>Variance Request – 114 Louisa Street</u>

Russell Cate gave a brief summary of the staff request. The applicant is requesting a variance from the rear setback. The property is zoned UR-8 and has a required rear setback of fifteen feet and the applicant is requesting to have a rear setback of two feet, thereby reducing the rear setback by thirteen feet. The applicant wishes to construct a 720 square foot secondary structure. The property is .83 acres, but the eastern half is encumbered by a walking trail easement for the

Flat Creek Greenway, therefore the setback is measured from the edge of the easement. The 100-year FEMA flood zone also runs along the edge of the easement.

Larry Pearlman asked if the bank above the greenway would have to be disturbed for the construction. It was recommended that the applicant answer that question.

Christina Little, 114 Louisa Street, said she is looking to build a residence for her father while also keeping space between the secondary structure and the primary residence and that is why she is seeking the variance. The easement was already in place when the property was purchased and her and her husband do pay taxes on the encumbered portion of the property. The structure would be twenty-four feet by twenty-four feet with a six-foot porch. The deck will be cantilevered.

Michael Salas, 120 Third Street, stated that he is opposed to the variance request because it will change the character of the greenway. Mr. Salas said that instead of seeing trees and greenery, you would see the structure and the deck. Mr. Salas referenced the greenway website which says that the purpose is to connect to the natural world. Mr. Salas also stated that if this variance is granted, then the board would have to allow others to have a variance. Mr. Salas asked when the fifteen-foot ruling was stated and that the owner should have been aware of the easement when they purchased the property.

Chair Lauren Dodgin asked for rebuttal evidence from staff. There was none. Chair Dodgin asked for rebuttal evidence from the applicant.

Christina Little, 114 Louisa Street, provided pictures of multiples homes and structures that are located anywhere from five to ten feet off of the greenway. Ms. Little stated that it will be thirty feet from the greenway to the proposed deck.

The board asked if there were any restrictions on the easement to the property owner. Jennifer Tipton looked up the easements on the Buncombe County Register of Deeds and stated that there were no restrictions listed on the easements. Chloe Riddle asked if the board could add a condition that the structure could not be used as an Air BnB. Ms. Tipton stated that you cannot restrict an allowable use and that use variances are illegal in North Carolina.

Chair Dodgin asked if there was any rebuttal evidence from other parties.

Michael Salas, 120 Third Street, asked what the purpose of the fifteen-foot setback was. It was explained that the setback is for the entire UR-8 zoning district and not just for the greenway. Mr. Salas said that he does not know why they can't just leave the structure at fifteen feet and with the potential for the structure to become an Air BnB it will still change the character of the greenway.

Chair Dodgin clarified that the board cannot consider past variances when considering a variance request. The board asked the applicant if there had been any thoughts to moving the porch to the side. Mrs. Little said that the door to the porch is located on the back of the house and that they

would probably just do away with the porch rather than move it to the side. Mrs. Little stated that she just wants to be able to use the property that she pays taxes on.

Andy Homrich made a motion to go into recess at 6:51 p.m. The motion was seconded by Lauren Dodgin and approved by a vote of 5-0.

The board discussed issues with the easement and how a public greenway has rendered almost one-third of the property unusable. The questioned why the easement was only on two parcels and how many properties actually touch the greenway easement. The board feels that cutting trees would be more detrimental to the greenway than allow a structure to built and again reiterated that the applicant is not looking to build in the easement but two feet off of the edge of the easement.

Andy Homrich made a motion to come out of recess. The motion was seconded by Chloe Riddle and approved by a vote of 5-0.

Jennifer Tipton summarized the evidence:

Town Exhibit 1: Staff Report
Town Exhibit 2: Variance Application
Town Exhibit 3: Buffer Map
Town Exhibit 4: List of Property Owners within 200'
Town Exhibit 5: Notice to Property Owners
Town Exhibit 6: Aerial Map
Town Exhibit 7: Ordinance Section 4.7.15
Town Exhibit 8: Ordinance Section 5.11
Town Exhibit 9: Legal Notice
Town Exhibit 10: Plat

Applicant Exhibit 1: Photographs

Andy Homrich made a motion to close the public hearing. The motion was seconded by Chloe Riddle and 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 ordinances because the placement of the easement restricts the setback boundary from the true property line.
2. The hardship does result from conditions that are peculiar to the property as the easement changes where the setback is measured from and renders one-third of the property unusable.
3. The hardship does not result from actions taken by the applicant as the easement was already in place when the property was purchased.
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 the

applicant to have fair use of the property and add a secondary dwelling which is an allowable use.

Chair Dodgin made a motion to grant the variance reducing the rear setback from fifteen feet to two feet. The motion was seconded by Andy Homrich and was approved by a vote of 5-0.

VI. COMMUNICATION FROM BOARD OF ADJUSTMENT

None.

VII. COMMUNICATION FROM STAFF

Jennifer Tipton said that Brian Gulden from Van Winkle Law Firm will be providing training for the board at the April meeting.

VIII. ADJOURNMENT

Lauren Dodgin made a motion to adjourn the meeting at 7:14 p.m. The motion was seconded by Larry Pearlman and approved by a vote of 5-0.

Prepared by:

Lauren Dodgin
Lauren Dodgin, Chair

Jennifer Tipton
Jennifer Tipton, Senior Admin