



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 April 18, 2024
Date: April 8, 2024

The **Town of Black Mountain Board of Adjustment** will meet on **Thursday, April 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 March 21, 2024;
3. Approval of Order for 114 Louisa Street; and
4. Training with Town Attorney.

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
Brian Gulden, Town Attorney



PUBLIC NOTICE **AVISO PÚBLICO**

BLACK MOUNTAIN BOARD OF ADJUSTMENT

REGULAR MEETING **REUNIÓN ORDINARIA**

Thursday, April 18, 2024, at 6:00 p.m.
Jueves 18 de Abril de 2024, a las 6:00 p.m.

The Black Mountain Board of Adjustment will meet for their monthly meeting on **Thursday, April 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 Abril 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 03/28/2024
www.townofblackmountain.org



**Board of Adjustment Regular Meeting
April 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 March 21, 2024, as written [or as amended]

IV. OLD BUSINESS

V. NEW BUSINESS

- Approval of Order for 114 Louisa Street
- Training with Town Attorney

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, 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. Variance Request – 114 Louisa Street

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

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March 21, 2024

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

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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

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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, Chair

Jennifer Tipton, Senior Admin

Board of Adjustment Regular Meeting
March 21, 2024

TOWN OF BLACK MOUNTAIN
COUNTY OF BUNCOMBE

BEFORE THE BLACK MOUNTAIN
BOARD OF ADJUSTMENT

In the Matter of the Application of)
Steven and Christina Little for a)
Variance for Property at 114 Louisa Street)
PIN #0619-48-1069.00000)
_____)

ORDER

THIS CAUSE, coming on before the Board of Adjustment for the Town of Black Mountain on March 21, 2024, upon the application of Steven and Christian Little for a setback variance to reduce the rear property line of fifteen feet to two feet to add a secondary dwelling on the property at 114 Louisa Street in Black Mountain, PIN #0619-48-1069.00000, which is Lot 4, Plat Book 0171 at Page 0197, Buncombe County Registry.

Christina Little appeared to present her case.

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 114 Louisa Street, Black Mountain, North Carolina, which has the current PIN number of 0619-48-1069.00000 as shown on the Buncombe County tax maps, also being Lot, Plat Book 0171 at Page 0197, 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 15 feet for location of structures with habitable space from the rear property line (Section 4.7.15 of the LUC) except that secondary dwellings shall meet the same setbacks as the primary structure. (Section 5.11.1 (A) of the LUC.)

6. The property is .83 acres.
7. There is a .299 acre walking trail easement that encumbers the eastern part of the property.
8. The Applicants desire to construct a 720 square foot secondary dwelling with a six foot porch in the rear of the property.
9. The proposed structure would be two feet away from the walking trail easement.
10. 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.)
11. The setback requirements of the ordinance, if strictly enforced, will be an unnecessary hardship for the Applicants, as the placement of easement restricts the setback boundary from the true property line.
12. The hardship results 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.
13. The hardship did not result from actions taken by the Applicants or the property owner, as the easement was already in place when the property was purchased.
14. 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 Applicants to have fair use of their property and add a secondary dwelling, which is an allowable use.

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 rear setback from fifteen feet to two feet to add a secondary dwelling.

IT IS NOW, THEREFORE, ORDERED, that the Applicants are granted a variance reducing the rear setback of 114 Louisa Street from fifteen feet to fourteen feet.

This the _____ day of _____, 2024.

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.