TOWN OF BLACK MOUNTAIN
BOARD OF ADJUSTMENT

The Black Mountain Board of Adjustment held its regular meeting on Thursday, April 18, 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
Nicole Stallings, Alternate
John Hines, Alternate
Linda Brinson, Alternate

Absent:

Larry Pearlman, Vice Chair
Ben Cooper
Chloe Riddle
Andy Homrich

Staff:

Jennifer Tipton, Senior Admin
Russell Cate, Planner I/Zoning Administrator
Brian Gulden, Town Attorney

The meeting was called to order at 6:02 p.m. and duly constituted and opened for business with a quorum of one (1) regular members and three (3) alternates.

II. ADOPTION OF AGENDA

Lauren Dodgin made a motion to adopt the agenda as presented. The motion was seconded by John Hines and approved by a vote of 4-0.

III. ADOPTION OF MINUTES

Lauren Dodgin made a motion to adopt the minutes of March 17, 2024, as written. The motion was approved by a vote of 4-0.

IV. OLD BUSINESS

None.

V. NEW BUSINESS

1. <u>Approval of Order for 114 Louisa Street Variance</u>

Lauren Dodgin made a motion to approve the order granting the variance request for 114 Lousia Street as written. The motion was approved by a vote of 4-0.

2. <u>Training with Brian Gulden</u>

Town Attorney Brian Gulden provided training to the board members. Mr. Gulden spoke about the boards role to hear special use permits, variances, and appeals from administrative decisions. The board acts like a judge and jury and cannot have ex parte communications, set opinions, or do independent investigations. Mr. Gulden spoke about fact witnesses versus opinion witnesses and that witnesses have to be qualified as experts. For any information about traffic, safety, or property values, there must be an expert to give that information. Mr. Gulden explained that an

expert witness would talk about their education, training, licenses, and if they have been qualified in front of any other boards and then the board would vote to qualify them as an expert or not. Board members have to base their decision on the information the witness presents. Variances require a four-fifths majority vote while special use permits and appeals only require a majority vote. Mr. Gulden explained that if a board member is recused from the case, then they are not counted in determining a quorum for voting, but if a board member is absent, they are counted in determining a quorum for voting. Mr. Gulden spoke about standing which means that a person would have a sufficient stake in the outcome of the case. Someone with standing would be able to fully participate in the case meaning that they could confront and cross-examine witnesses and the applicant, have an opening statement, present evidence, and have a closing statement. Members of the community can be sworn in to speak but typically their comments and statements are not given much weight as they are not truly invested in the case. Mr. Gulen said that there is associational standing where a homeowner's association can have standing as long as one member in the association would qualify for standing. However, an association formed solely in opposition of the case would not have standing. Someone who claims to have standing would have to explain why they have standing and the board would have to vote whether they have standing or not. Variances require proof of unnecessary hardships and the courts have stated that economic hardship alone does not allow the granting of a variance. Mr. Gulden then spoke about appeals of administrative decisions. In appeals, the board would step into the shoes of the staff and look at the record presented to them. The record will include information staff used in making their determination, but the board can accept new evidence. For appeals, the board may uphold the decision, reverse the decision, or modify the decision. Mr. Gulden then finished up by briefly talking about ex parte communications. He told the board that they should not actively seek information or to talk to an applicant. If they are approached, don't communicate, but do disclose that they were approached. Undisclosed ex-parte communications are what will cause recusals from cases.

VI. COMMUNICATION FROM BOARD OF ADJUSTMENT

None.

VII. COMMUNICATION FROM STAFF

None.

VIII. ADJOURNMENT

With no further business, the meeting was adjourned at 7:23 p.m.

Prepared by:

Lauren Dodgin
Lauren Dodgin, Chair

Jennifer Tipton
Jennifer Tipton, Senior Admin