



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 July 20, 2023
Date: July 10, 2023

The **Town of Black Mountain Board of Adjustment** will meet on **Thursday, June 20, 2023, 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 June 15, 2023; and
3. Variance Order for 20 Goldmont Street.

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, July 20, 2023, 2023, at 6:00 p.m.
Jueves 20 de julio de 2023, a las 6:00 p.m.

The Black Mountain Board of Adjustment will meet for their monthly meeting on **Thursday, July 20, 2023, 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 20 de julio de 2023 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 06/30/2023
www.townofblackmountain.org



**Board of Adjustment Regular Meeting
July 20, 2023**

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 June 15, 2023, as written [or as amended]

IV. OLD BUSINESS

V. NEW BUSINESS

- Approval of Order for 20 Goldmont Street

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, June 15, 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
Ben Cooper
Chloe Riddle

Absent:

Andy Homrich

Staff:

Jennifer Tipton, Senior Admin
Russell Cate, Planner I/Zoning Administrator
Ron Sneed, Town Attorney

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.

II. ADOPTION OF AGENDA

Larry Pearlman made a motion to adopt the agenda as presented. The motion was seconded by Ben Cooper and approved by a vote of 4-0.

III. ADOPTION OF MINUTES

Larry Pearlman made a motion to adopt the minutes of May 18, 2023, as written. The motion was seconded by Ben Cooper and approved by a vote of 4-0.

IV. OLD BUSINESS

None.

V. NEW BUSINESS

1. Variance Request for 20 Goldmont Street

There were no ex-parte communications from the board members.

Jennifer Tipton swore in all persons wishing to testify and speak.

Russell Cate gave a brief summary of the variance for 20 Goldmont Street. The applicant currently has a legal non-conforming garage that is one foot from the side property line. The ordinance for accessory structures requires a minimum of five feet from the side and rear property lines. The owner would like to enlarge the garage keeping it along the same one-foot setback on the side property line.

Mark Riley, 20 Goldmont Street, said that is looking to enlarge the garage to be able to have a place to restore an old truck, park two vehicles and have enough room to pull his RV through the garage and into the back yard. The driveway is the minimum width allowed and Mr. Riley said he had approached the neighbor about buying a strip of land to make the driveway bigger and

Board of Adjustment Regular Meeting
June 15, 2023

add some square footage to the side of his property, but the property owner is no longer interested in doing that. If he were to move the garage over, the doors would be off set. Moving the building further back and over would take up more of the yard and not allow room for the camper.

Jennifer Tipton summarized the evidence as follows:

- Exhibit 1: Staff Report
- Exhibit 2: Variance Application
- Exhibit 3: Buffer Map
- Exhibit 4: List of Property Owners within 200'
- Exhibit 5: Notice of Variance Request
- Exhibit 6: Aerial Map
- Exhibit 7: Section 4.5.4 of the Land Use Code

The board went into recess at 6:21 p.m. Town Attorney Ron Sneed explained that the non-conformity is being enlarged and that requires a variance. The board discussed the fact that the applicant would either have to use up a huge portion of the yard or be left with an old garage. Ben Cooper expressed concerns about the size of the garage and that the garage is going to be almost as big as the house in terms of square footage as the proposed garage is 1,800 square feet and the existing garage is 346 square feet. The board discussed that other lots in the neighborhood are wider than this lot and acknowledged that the prior owner divided the lots too close. There was discussion that the same garage could be built further back and then shifted over to meet the requirements of the ordinance.

The board came out of recess at 6:41 p.m.

The board found the following:

1. While the applicant offered testimony that the preference for construction of a garage in the side yard to leave room for parking of an RV behind the house and to preserve more of the rear yard for recreational use, the statements were insufficient to support a finding that unnecessary hardship would result from the strict application of the ordinance.

The variance fell short of the necessary 4/5ths vote so the variance request is denied.

VI. COMMUNICATION FROM BOARD OF ADJUSTMENT

None.

VII. COMMUNICATION FROM STAFF

None.

VIII. ADJOURNMENT

Prepared by:

Laura Dodgin, Chair

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Jennifer Tipton, Senior Admin

Board of Adjustment Regular Meeting
June 15, 2023

TOWN OF BLACK MOUNTAIN
COUNTY OF BUNCOMBE

BEFORE THE BLACK MOUNTAIN
BOARD OF ADJUSTMENT

In the Matter of the Application of)
Mark Riley and Sharon Riley for a)
Variance for Property at 20 Goldmont Street)
PIN No. 0609-94-4455-00000)
_____)

ORDER

THIS CAUSE, coming on before the Board of Adjustment for the Town of Black Mountain on June 15, 2023, upon the application of Mark Riley and Sharon for a setback variance for a new garage to replace an existing garage and to allow the new garage to be located one foot from the side property line on the property at 20 Goldmont Street in Black Mountain, PIN #0609-94-4455-00000, which is Lot 72 and a portion of Lot 73, Plat Book 198 at Page 20, Buncombe County Registry.

Mark Riley appeared to present his case and Sharon Riley was in attendance but did not testify.

Jennifer Tipton, Senior Administrative Assistant, and Russell Cate, Zoning Administrator, appeared for the Town staff; Ronald E. Sneed attended as counsel to the board, and four 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 the 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 Adjustment was provided as required by the Town ordinances and the state law.
3. Applicant is an owner of the property located at 20 Goldmont Street, Black Mountain, North Carolina, which has the current PIN number of 0609-95-4455-00000 as shown on the Buncombe County tax maps, also being Lot 72 and a portion of Lot 73, Plat Book 198 at Page 20, 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 20 feet for location of structures from the front property line, 10 feet from the side property lines, and 15 feet from the rear 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 346 square foot garage on the property, which was constructed in 1950, prior to the adoption of the existing Land Use Code, which is located approximately one foot from the north property line.

7. The Applicants desire to demolish the existing garage and replace it with a new garage with approximately 1800 square feet of enclosed space, built wide enough to allow parking of two cars side by side at the front, a work area behind the parking area for the Applicant Mark Riley to use as workshop area to restore an old truck, and of sufficient width and height from front to back to allow a recreational vehicle to pass through so it can be parked in the rear yard.

8. The Applicants propose to have the new garage to be built one foot from the property line, with the new garage extending along the north property line, one foot from that property line.

9. The proposed new garage will have more of the structure set one foot from the property line than the old garage, enlarging the non-conformity, which is prohibited unless a setback variance is granted (Section 1.3.1.C.1 of the Land Use Code.)

10. The house on the property is located on the lot so that it meets setback requirements, but too close to the side lot line to allow a garage of the width desired to be built five feet off the side lot line and still be accessible for side by side parking for two vehicles.

11. The space between any garage and the house is insufficient for a driveway to allow the Applicant's recreational vehicle to be driven between the house and the garage to the rear yard for storage.

12. There is sufficient space in the back yard to construct a larger garage, but the Applicants prefer to be able to park their recreational vehicle in that area rather than beside or in front of the house.

13. To be granted a variance, the Applicant is required to prove all 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).

14. While the Applicant offered testimony that his preference for construction of a garage in the side yard to leave room for parking of a recreational vehicle behind the house and to preserve more of the year yard for recreational use, these statements of preferences were insufficient to support a finding that unnecessary hardship would result from the strict application of the ordinance.

15. Since all four of the statute and ordinance requirements must be proven by the Applicant before a variance can be granted, this Board did not discuss the remaining three requirements.

BASED UPON THE FOREGOING FINDINGS OF FACT, THIS BOARD by a vote of 4 to 0 concludes that no unnecessary hardship will result from the strict application of the ordinance and that the Applicant is not entitled to the variance requested.

IT IS NOW, THEREFORE, ORDERED, that the Applicant’s request for a variance of the side setback line to replace an existing garage with a new garage is denied.

This the _____ day of _____, 2023.

LAUREN DODGIN, Chairman

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 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.