



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 October 20, 2022
Date: October 10, 2022

The **Town of Black Mountain Board of Adjustment** will meet on **Thursday, October 20, 2022, 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 September 15, 2022;
3. Approval of Order for 106 Fourth Street Variance Request; and
4. Approval of Order for 310 Allen Mountain Drive Variance Request.

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
Ron Sneed, Town Attorney



PUBLIC NOTICE
AVISO PÚBLICO

BLACK MOUNTAIN BOARD OF ADJUSTMENT

REGULAR MEETING
REUNIÓN ORDINARIA

Thursday, October 20, 2022, at 6:00 p.m.
Jueves 20 de octubre de 2022, a las 6:00 p.m.

The Black Mountain Board of Adjustment will meet for their monthly meeting on **Thursday, October 20, 2022, 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 octubre de 2022 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

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

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 10/03/2022
www.townofblackmountain.org



**Zoning Board of Adjustment Regular Meeting
October 20, 2022**

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 September 15, 2022, as written [or as amended]

IV. OLD BUSINESS

V. NEW BUSINESS

- Approval of Order for 106 Fourth Street Variance Request
- Approval of Order for 310 Allen Mountain Drive Variance Request

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, September 15, 2022, 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
Ben Cooper
Andy Homrich
Larry Pearlman

Absent:

Chloe Riddle

Staff:

Jennifer Tipton, Senior Admin
Russell Cate, Planner I
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. Lauren Dodgin was elected temporary chair by consensus.

II. ADOPTION OF AGENDA

Larry Pearlman made a motion to adopt the agenda as presented. The motion passed by a vote of 4-0.

III. ADOPTION OF MINUTES

Larry Pearl made a motion to adopt the minutes of April 21, 2022, and August 18, 2022, as written. The motion was approved by a vote of 4-0.

IV. OLD BUSINESS

None.

V. NEW BUSINESS

All board members expressed that they had no ex-parte communications for either variance case.

Town Attorney Ron Sneed gave a five-minute overview of the variance process.

1. Election of Officers

Larry Pearlman nominated Lauren Dodgin for Chair. The motion was seconded by Ben Cooper. The motion was approved by a vote of 4-0.

Ben Cooper nominated Larry Pearlman for Vice Chair. The motion was seconded by Andy Homrich. The motion was approved by a vote of 4-0.

Ben Cooper nominated Andy Homrich for Secretary. The motion was seconded by Larry Pearlman. The motion was approved by a vote of 4-0.

2. Variance Request for 106 Fourth Street

All persons wishing to speak for both cases were sworn in.

Andy Homrich made a motion to open the evidentiary hearing for 106 Fourth Street. The motion was seconded by Larry Pearlman and approved by a vote of 4-0.

Jennifer Tipton gave a summary of the variance request. The applicant is seeking a variance to reduce the side and rear setbacks to allow the garage to be used as a secondary dwelling. The specific request is to reduce the required side setback of ten feet to six feet and to reduce the required rear setback from fifteen feet to seven feet.

John Whitfield, 106 Fourth Street, recently moved to the community and he is requesting the variance to be able to convert the garage to a secondary dwelling. Mr. Whitfield said he would like to host family and friends, have the possibility to make some rental income, or possibly have a mother-in-law space. The former owner used the garage as a woodworking shop, and it is not conducive to use as a garage as the floor is elevated. The garage was already in place when Mr. Whitfield purchased the property. The garage is located on the southwest corner of the lot and does not meet the setback requirements for a secondary dwelling. Mr. Whitfield feels the ordinance is in place to allow secondary dwellings for additional housing and he would ensure that neighborhood standards were maintained, and peace and privacy will be upheld.

Kiersten Hall, 100 Portmanville Road, read a letter that her and her family moved to town in 2009 to raise their young family and is not in support of reducing setbacks to allow a secondary dwelling. Ms. Hall referenced a case from a past Board of Adjustment from April 21, 2021, to reduce setbacks to allow a secondary dwelling and the board at that time did not grant the variance.

Belinda Box, 107 Third Street, said that her family as lived at their house for almost twenty years and her backyard is within two hundred feet of the subject property. Ms. Box feels that a negative precedent will be set allowing unregulated rentals and the feel of a hotel community. Ms. Box feels the request should be denied and that there are rules in place for a reason, particularly noise. Ms. Box feels that a dwelling would impact her ability to enjoy her backyard. Mr. Whitfield said asked if Ms. Box hears noise from the house at 105 Third Street and Ms. Box responded that yes, they have heard noises from the neighbor and has been disturbing. The last four numbers of the PIN are 6287.

Cheryl Milton, 202 Mountain Street, is speaking on behalf of her father, Jack Milton who owns the property at 400 Montreat Road, as power of attorney. Ms. Milton reference 5.11.1 (a) says "shall" and that they cannot be deviated from and is in the general statutes. Ms. Milton said that she was the chair during the case that Belinda Box referenced. Ms. Milton said that a variance is something that is rarely given and if they are given all the time, then there is no reason to have a code. Ms. Milton referenced at 5.11.1 (b) says that the structure has to be built to the NC Residential Code and there is no guarantee that the garage structure would meet those standards. Ms. Milton said that the reduction request is a large ask. Ms. Milton asked how large the garage is and Ms. Tipton responded that the garage is two hundred and fifty-six square feet. Ms. Milton also spoke about parking requirements and the amount of space that a secondary dwelling can take up on a lot. Ms. Milton also questioned if any additions would be made to the structure.

Mr. Whitfield said that the setback request was generous as he did not have time to get a survey. The square footage is within the required amount, and they are planning no additions. They do plan to go through all of the proper channels for zoning and building permits to ensure that the

Board of Adjustment Regular Meeting
September 15, 2022

dwelling meets all requirements. There is ample parking as they have a semi-circle driveway in the front as well as a driveway extending to the garage so all parking requirements would be met. Andy Homrich asked about the garage floor and Mr. Whitfield said that the former owner built the garage as a workshop, so the floor is a wooden floor with outlets built into the floor and was not designed to park in and since they cannot use it to park in, they are trying to find the best use of the structure. Mr. Homrich asked if the floor could be changed to a garage floor and Mr. Whitfield said that he has not had a contractor look at that and it is not a project he has considered at this time just to park his car in.

Robert Box, 107 Third Street, said the most everyone has covered his concerns and that his house is an 1100 sf bungalow with an outbuilding and would never have thought to change the dwelling to make it habitable. It is a shop and storage area that is on the property line and built in the 1930's. Mr. Box said that he knew what he was getting into when he bought the property and knew the rules and regulations and that he has raised his family in an 1100 square foot house and made the house work with what he bought. Mr. Box thinks allowing this would set a precedent and would impact the neighborhood and community and if we start turning residential neighborhoods into hotels, he worries what will happen to the families. Mr. Box thinks the owner has good intentions but what happens if he sells the property then what would the next buyer do with the property.

Mr. Whitfield says he respects everyone's opinion but is curious what he would be doing to the neighborhood. Mr. Whitfield says he does not intend to run the neighborhood into the ground and he plans to raise his family here and be here for a long time.

There was not rebuttal evidence from staff or the applicant.

There were no closing statements from staff or the applicant.

Town Attorney Ron Sneed spoke about the recess process that the board will follow which will allow them to speak amongst themselves and determine if they have any additional questions for staff or the applicant. Chair Dodgin made a motion to go into recess at 6:51 p.m. The motion was seconded by Ben Cooper. The board discussed hardship and substantial justice. The reconvened at 6:57 p.m. Chair Dodgin made a motion to close the public hearing. The motion was seconded by Ben Cooper and approved by a vote of 4-0. Ben Cooper made a motion to deny the variance request based on the fact that there is not an unnecessary hardship on the property as the property is the same size and shape as most of the other lots in the neighborhood. The motion passed 4-0.

3. Variance Request for 310 Allen Mountain Drive

Jennifer Tipton gave a summary of the variance request. The applicant is seeking a variance from the front setback to install a patio. The specific request is to reduce the required front setback from thirty feet to twenty feet.

Chair Dodgin made a motion to open the public hearing. The motion was approved by a vote of 4-0.

Carol Hile, 310 Allen Mountain Drive, said that she was unaware of the front setback and the setback actually takes up her whole front yard and she would like to place a patio out front. There are some old bushes that would be removed to make space for the patio. The house was built in 1965. Andy Homrich asked about the setbacks with regards to the required front setback and the steep slope setback. Ms. Tipton said that steep slope starts at 36% and Mr. Cooper said he thought at 25%. Mr. Cooper asked if the patio would be on-grade with the house and Ms. Hile said that it would be the same level as the house with one step to the patio and it will be

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September 15, 2022

uncovered. Allen Mountain Drive has a forty-five right-of-way. The steep slope starts at 25% so Ms. Tipton amended her statement. With that amendment, the actual setback request is eight feet. There was no rebuttal or closing statements from staff or the applicant.

Chair Dodgin made a motion to go into recess at 7:13 p.m. The motion was seconded by Andy Homrich and approved by a vote of 4-0. The board discussed hardship and spirit and intent. The board reconvened at 7:27 p.m. Chair Dodgin made a motion to close the public hearing. The motion was approved by a vote of 4-0. Larry Pearlman made a motion to grant the variance with the condition that the patio remain uncovered because there is an unnecessary hardship as the house was built prior to zoning being in effect and therefore it does not allow her to have something that her other neighbors can have. The motion was seconded by Ben Cooper and approved by a vote of 4-0.

VI. COMMUNICATION FROM BOARD OF ADJUSTMENT

None.

VII. COMMUNICATION FROM STAFF

Jennifer Tipton introduced Russell Cate, Planner I/Zoning Administrator.

VIII. ADJOURNMENT

Chair Dodgin made a motion to adjourn at 7:41 p.m. The motion was approved by a vote of 4-0.

Prepared by:

Lauren Dodgin, Chair

Jennifer Tipton, Senior Admin

TOWN OF BLACK MOUNTAIN
COUNTY OF BUNCOMBE

BEFORE THE BLACK MOUNTAIN
BOARD OF ADJUSTMENT

In the Matter of the Application of)
John Whitfield for a Variance for)
for Property at 106 Fourth Street)
PIN No. 0619-38-6422-00000)
_____)

ORDER

THIS CAUSE, coming on before the Board of Adjustment for the Town of Black Mountain on September 15, 2022, upon the application of John Whitfield for a variance to allow a reduction of the rear setback on the property at 106 Fourth Street in Black Mountain, PIN #0619-38-6422-00000, which is Lot 9, Block 5, Plat Book 154 at Page 106, Buncombe County Registry.

John Whitfield appeared to present his case.

Jennifer Tipton, 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 Applicant was offered the opportunity to continue his hearing to a later date so as to be able to offer his evidence and arguments to a full panel of 5, allowing to him to be required to convince 4 out of 5 board members hearing the matter instead of all members in attendance, which offer was declined.

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 106 Fourth Street, Black Mountain, North Carolina, which has the current PIN number of 0619-38-6422-00000 as shown on the Buncombe County tax maps, being Lot 9, Block 5, Plat Book 154 at Page 106. 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 house on the property, which was constructed in 2012, and an accessory structure at the rear of the lot which is located closer to the rear lot line than 15 feet but at least 5 feet from the property line which was constructed at approximately the same time as the principal structure. No survey or other information was presented which could be used to establish the exact distance between the structure and the property line, but the aerial photo entered into evidence does appear to show that the accessory structure is not 15 or more feet from the rear property line, and the application submitted by the Applicant requested that the rear setback be reduced to seven feet for a secondary residence.

7. Without a survey, testimony or other evidence being presented about the location of the structure from the side property line, it cannot be determined how far the existing accessory structure is from the side property line. No evidence was submitted to show the distance between the accessory structure and the side lot line, but the application submitted by the Applicant requested that the side setback be reduced to six feet for a secondary residence.

8. The existing accessory structure was constructed for use as a workshop, with a framed wooden floor and not set on a concrete slab or with a concrete floor which would have made the structure usable as a garage.

9. The accessory structure has an enclosed space of approximately 250 square feet.

10. The Applicant wants to convert the accessory structure into a secondary dwelling, which could be used as a short term rental unit, occupied by a full time tenant, or used by guests of the property owner.

11. The Applicant testified that he lacked the mechanical and craft skills that would allow him to make practical use of the accessory structure as a workshop.

12. The Applicant testified that he thinks that it is possible to replace the floor of the accessory structure with a concrete slab so as to make it usable as a garage.

13. Secondary dwellings are allowed on properties in the UR-8 zoning district (Section 4.7.14 of the LUC), with limitations on size and location (Section 5.11.1. of the LUC).

14. Secondary dwellings have to comply with the same setback requirements as the principal residence on the property, so that it has to be located at least 15 feet from the rear lot line if no variance is granted. and 10 feet from the side lot line (Sections 5.11.1.A. and 4.6.3.3 of the LUC).

15. 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).

16. While the Applicant offered testimony that his preference for the use of the accessory structure would be to convert it to a secondary dwelling, no evidence was submitted to show that the strict application of the ordinance creates unnecessary hardship.

17. 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 rear setback line to allow an existing accessory structure to a secondary residence is denied.

This the _____ day of _____, 2022.

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.

TOWN OF BLACK MOUNTAIN
COUNTY OF BUNCOMBE

BEFORE THE BLACK MOUNTAIN
BOARD OF ADJUSTMENT

In the Matter of the Application of)
Carol Hile for a Variance for)
for Property at 310 Allen Mountain Drive)
PIN No. 0609-78-6302-00000)
_____)

ORDER

THIS CAUSE, coming on before the Board of Adjustment for the Town of Black Mountain on September 15, 2022, upon the application of Carol Hile for a variance to allow a reduction of the front setback on the property at 310 Allen Mountain Drive in Black Mountain, PIN #0609-78-6302-00000, which is Lot 42B, Block B, Plat Book 34 at Page 32, Buncombe County Registry.

Carol Hile appeared to present her case.

Jennifer Tipton, 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 Applicant was offered the opportunity to continue her hearing to a later date so as to be able to offer her evidence and arguments to a full panel of 5, allowing to her to be required to convince 4 out of 5 board members hearing the matter instead of all members in attendance, which offer was declined.

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 310 Allen Mountain Drive, Black Mountain, North Carolina, which has the current PIN number of 0609-78-6302-00000 as shown on the Buncombe County tax maps, being Lot 42B, Block B, Plat Book 34 at Page 32. Buncombe County Registry.
4. The property is zoned CR-1.

5. In the CR-1 zoning district, there are building setbacks established in the Land Use Code, with a 30 foot setback for location of structures from the front property line,(Section 4.7.15 of the LUC).

6. There is an existing house on the property which was constructed prior to the adoption of the current Land Use Code which created the current building setback standards.

7. The front wall of the house on the property is 27 feet 3 ½ inches from the front property line and 48 feet 3 ½ inches from the edge of the pavement of Allen Mountain Drive.

10. The Applicant wants to construct a patio at the front of the house extending ten feet from the front of the house, which would extend ten feet more into the building setback area to within 17 feet 3 ½ inches of the property line, requiring a variance reducing the front setback to 17 feet 3 ½ inches.

11. The patio as planned will have no vertical structures and will be just tile, brick or other paving type material lying on the ground in an area where all the activities associated with patios can be legally performed in that area.

12. The patio as planned will not be visible from the street because of the slope of the lot down to the street.

13. The patio as planned will be a use that others in the same neighborhood would be allowed to have.

14. 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).

15. The setback requirements of the ordinance, if strictly enforced, will be an unnecessary hardship for the Applicant, as it will prohibit her from having front patio that would otherwise be allowed in a location that will not be visible from the street and will not change the

appearance of the property or the neighborhood.

16. The hardship results from conditions that are peculiar to the property, as the house which was constructed prior to the adoption of the current Land Use Code and the current zoning classification of the lot establishing a front setback which precludes normal amenities of front lawns.

17. The hardship did not result from actions taken by the applicant or the property owner, as the house was constructed before she took title and before the adoption of the current Land Use Code.

18. 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 a use which is available to all property owners in the neighborhood and will create no hazardous conditions.

19. The requested variance will be more consistent with the spirit, purpose and intent of the ordinance if it subject to the condition that the structure of the patio itself will contain no vertical structures such as fences, walls, storage cabinets or built in amenities such as a permanent grill built of masonry, stone or other material.

BASED UPON THE FOREGOING FINDINGS OF FACT, THIS BOARD by a vote of 4 to 0 concludes that Applicant has sufficiently proved the existence of the above stated requirements for the granting of a variance and is entitle to the variance requested subject to the limitations set out above.

IT IS NOW, THEREFORE, ORDERED, that the Applicant's request for a variance of the front setback line to reduce it to 17 feet 3 ½ inches for a patio built at ground level, is approved, subject to the limitation that such patio will not be elevated above the level of the base of the front of the house and shall contain no vertical structures such as fences, walls, storage cabinets or built in amenities such as a permanent grill built of masonry, stone or other material.

This the _____ day of _____, 2022.

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.

