

**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 Pearlman 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

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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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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