TOWN OF BLACK MOUNTAIN
BOARD OF ADJUSTMENT

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

Absent:

Andrew Homrich
Amy Golden
David Bryson

Staff:

Wesley Barker, Town Clerk
Russell Cate, Planner I/Zoning Administrator
Brian Gulding, 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 and one (1) alternate.

Chair Lauren Dodgin read the opening statement and Town Attorney Brian Gulden explained standing.

II. ADOPTION OF AGENDA

The appealant for 102 Byrd Road removed his appeal request. The appeals were reversed to have 115 East Street be heard first and 200 NC 9 Hwy heard second. The amended agenda was approved by consensus.

III. ADOPTION OF MINUTES

The minutes of August 15, 2024, were approved as written by consensus.

IV. OLD BUSINESS

None.

V. NEW BUSINESS

1. <u>Variance Request – 115 East Street</u>

The applicant is requesting a variance to the rear setback requirement of fifteen feet to seven feet to convert an accessory structure into a secondary dwelling and also requesting a variance from the side setback requirement of five feet to three feet for an accessory structure. Chair Dodgin asked that any parties with standing to advise the board.

Ryan Queen, 118 Hillside Drive, affirmed that his testimony regarding his standing in this matter is true. Mr. Queen said that he owns the five-foot strip of land and the other parcel behind the

subject property. Mr. Queen said he eventually would like to build a house on the other parcel and that the variance could affect that. The five-foot strip and the parcel behind are in contention of ownership and Mr. Queen said that he is trying to get them combined and into one name and get the appropriate amount of square footage to be able to build a structure. Attorney Gulden explained the structures that are the subject of the variance are on property owned by the applicant and do not encroach onto the property owned by Mr. Queen. John Hines made a motion to grant standing to Mr. Queen. The motion was approved by a vote of 5-0.

At this time, Wesley Barker administered the oath to the applicants, parties with standing, and staff.

No board members had any ex-parte or conflicts in this matter and neither party had an objection to the panel.

Chair Dodgin opened the evidentiary hearing.

Russell Cate presented the staff report to the board. The first structure is to be converted into a secondary dwelling and the second structure is to be renovated into an office and workout space. The property is zoned UR-8. The property is not within a floodplain or floodway and is not a designated steep slope lot. The accessory structure that is to be converted into a secondary dwelling meets the accessory structure setback requirements but would be non-conforming to the secondary dwelling setback requirements. The accessory structure that is to be converted into an office is a legally non-conforming structure as it currently sits three feet from the side property line. Since the renovation costs exceed fifty percent of the assessed value, the structure has to meet the current requirements. Attorney Gulden asked if the property was properly posted, advertised in the Black Mountain News, and adjacent property owners notified. Mr. Cate said that yes, and that the information is included in the staff report. Mr. Queen asked who the surveyor of the survey was. Mr. Cate said that he could not recall the name, but that he always does verify that the surveyor is a licensed surveyor. Mr. Queen asked if it is the job of the surveyor to determine ownership of the property. Mr. Cate said that he was not sure as he is only making sure the plat meets the requirements of the land use code. There were no further questions for Mr. Cate.

Michael Delang and Sandy Geisel, 115 East Street, are the owners of 115 East Street. The property was marketed as two lots and the contract showed the two PINs of the front lot and the back lot and were not aware of the five-foot strip. Ms. Geisel said that they did not notice the “less and except” clause in the warranty deed. They want to restore the garage as an apartment and live in one and rent out the other long-term. There is a letter from the attorney that was included in the application that does verify that Mr. DeLang and Ms. Geisel own the back parcel but not the five-foot strip of land and because of that, they do not have the setback requirements and is why the variance is being requested. They are not adding onto the structures, just renovating the interiors. Ms. Brinson asked if they were under the impression that they were purchasing all of the lots when they signed the deed and Mr. DeLand and Ms. Geisel said that yes, they thought that they were purchasing all of the property and the five-foot strip did not show up in any documents or title searches until after the fact. There were no further questions for the applicants.

Ryan Queen, 118 Hillside Drive, said that he objects to the variance because it will affect his future endeavors and that he owns both of the back parcels. Mr. Queen said that all he did was transfer the property from one business name to another. Mr. Queen then read the legal description of one of the parcels (the five-foot strip of land) that was transferred back to him and his grandmother. Mr. Queen then read the legal description for the parcel behind the five-foot strip. Mr. Queen said that granting the variance would deprive him of his right to build on his property. Mr. Queen said that he tried to explain to Mr. DeLang and Ms. Geisel about the quit-claim deed and that there was a page missing in the copies he received and that may be why there was confusion on the five-foot strip. There were no questions for Mr. Queen.

Chair Dodgin asked for rebuttal evidence from the applicant. Mr. DeLang said that as for financial hardship, they purchased the property as an investment with the intent of living in the back and renting out the front and the income from the rental would allow them to have an investment home and without the variance, they would not have the rental income from the front property. Ms. Geisel said that nothing will look different with the buildings regardless of who owns the property behind the subject property.

Chair Dodgin asked for rebuttal evidence from staff and Mr. Cate said that there was none.

Chair Dodgin asked for rebuttal evidence from the party with standing. Mr. Queen asked for clarification about the variance request and for confirmation that it was not about land ownership. Chair Dodgin confirmed that it is not about land ownership. Mr. Hines explained that the applicants are looking to change the use of the structures, but the structures would remain in the same place they currently sit. Attorney Gulden explained what a setback is. Attorney Gulden said that the variance would not prevent Mr. Queen from doing anything he is legally able to do in conformance with the land use code.

There were no closing arguments.

Chair Dodgin made a motion to close the evidentiary hearing. The motion was seconded by Nicole Stallings and approved by a vote of 5-0.

The board deliberated and found that:

1. There are unnecessary hardships because they purchased the property thinking that they would have enough room and not need a variance and now there are property issues that have arisen that are now causing the need for a variance.
2. The hardship results from conditions that are peculiar to the property because the buildings are already existing and there is the odd five-foot strip behind the property that was not known about until after closing.
3. The hardship did not result from actions taken by the applicant in that the applicants purchased the property thinking that they owned the five-foot strip and would have enough room to do their intended projects and found out after closing that they did not own that five-foot strip and therefore, that took away land that they thought they had to pursue their projects.

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 because it allows the property owner to use their property for a legal purpose.

Chair Dodgin made a motion to grant the variance reducing the rear setback from fifteen feet to seven feet to convert the garage into a secondary dwelling and to reduce the side setback from five feet to three feet to convert the accessory structure into an office and workout space.

2. Variance Request – 200 NC 9 Hwy
The applicant is requesting a variance from the stream buffer and transitional area be removed from the parcel's design restrictions.

At this time, Wesley Barker administered the oath to the applicants, parties with standing, and staff.

Jon and Laurie Brooks, 373 Lake Eden Road, owns property that adjoins the subject property and are concerned about drainage issues and property value. John Hines made a motion to grant standing to Mr. and Mrs. Brooks. The motion was approved by a vote of 5-0.

Scott Roy, 4 Laurel Branch Drive, owns the property across the road on NC 9 Highway and received only the zoning notice and is not sure if he will need to speak or not. The board felt that given the proximity of the property and the strangeness of the times and storm recovery, John Hines made a motion to grant standing to Mr. Roy. The motion was approved by a vote of 5-0.

Chloe Brown acknowledged that she knows two of the parties but has not spoken to them about the case. Attorney Gulden asked if she could be fair and impartial, and she replied yes. No other board member reported any ex parte or conflicts. There were no objections to the panel.

Russell Cate presented the staff report to the board. The requirements in the ordinance require that there be a stream buffer on either side of the watercourse depicted as a solid blueline on the most recent USGS map. The measurement is done thirty feet horizontally from the top of the streambank or watercourse in a direction perpendicular to stream flow. The other requirement is that on top of the thirty-foot requirement, there is an additional twenty-foot transitional area is required immediately landward of the buffer. The applicant feels that the requirements do not provide functionality to the design of a commercial site, an on-site study did not find a blueline stream on the site, USGS maps from 1994 to 2019 do not show the stream, and lastly, existing sites within the buffer are not designed to meet the buffer requirements. The applicant feels that safety and traffic issues would occur if they had to meet the buffer requirements. Mr. Cate read the purpose of the stream buffer requirements. The staff report includes the standards and exceptions for the buffer area and the transitional area. The existing parcel is 1.6 acres and is zoned HB-8. The existing building was most recently a bank building. The staff report includes the provision that new development would have to meet all current requirements and because the plan is to demolish the existing structure and building a new commercial structure, staff believes the project would have to meet all current regulations. Mr. Cate said that he had pointed the applicants to exception six which speaks about piping the stream and that the piped stream would not be requirement to meet the standards. Mr. Cate was asked about piping a stream and how that

relates to the natural feature of the stream. Mr. Cate again read the exception and said that staff requires documentation from US Army Corps that it meets the requirements of piping a stream. Mr. Cate said he would not confirm or deny if there was a stream there currently or what the grate on the property is for. Mr. Cate was asked if a member of the public or a property owner has a mechanism to request a change to the USGS maps based on current conditions and Mr. Cate said he did not know. There were no further questions for Mr. Cate.

Kevin Maurer from Kimley-Horn and Josh Harley from Circle K presented as the applicants. Mr. Maurer spoke about piping the stream and that the grate inlet is collecting downstream of the stream and there is an inlet collecting upstream and there is an existing pipe and the entire area does get captured by at least a ten-year storm, but feels that it does capture up to a one-hundred-year storm. Mr. Maurer spoke about streams on the USGS maps being created from GIS data and that the existing stream is downstream from the subject property and would have to go through two properties to get to the subject property and then would be captured by the existing grate inlet. Mr. Maurer said that they do not see a stream there nor does it appear that there was ever a stream there. In regard to hardship, to meet the stream buffer would eliminate the back driveway to Black Mountain Avenue and the drive aisle widths would have to be reduced. This would cause loss of interconnectivity and backup traffic within the lot. Mr. Harley said that Circle K has strict design requirements within the company and wants to ensure that the site is safe and will not cause any safety or traffic issues or decreased business. The new site would still be captured to the current requirements and would not cause any additional stormwater problems. The applicants were asked if they were in the area on September 27th during the storm to see the amount of water that was inundating surrounding properties, and they stated that they were not, but in designing stormwater measures, they are held to the standards set by the town and the state and that the current storm goes past any design requirements. There were no further questions for the applicants.

Jon Brooks, 373 Lake Eden Road, said that when rainwater comes off of the railroad tracks and comes into the basement of his building and then leaves his property onto the other property, there is a section that enters into the piped area and Mr. Brooks appealed to the applicants to address that area to allow more water to flow through to prevent backup onto his property. Mrs. Brooks said that the water that has to be mitigated for even a regular storm floods the basement and has to be pumped out and that the low spot needs to remain to allow the dumping of the water. Mrs. Brooks appealed to the applicants to keep the existing trees on the site as much as possible and to work with the cuteness of the town. There were no further questions for Mr. and Mrs. Brooks.

Chair Dodgin asked for rebuttal evidence from the applicants and there was none.

Chair Dodgin asked for rebuttal evidence from staff and Mr. Cate said that there was none.

Chair Dodgin asked for closing statements. Mr. Harley said that he hears the concerns, and they want to be good neighbors and he is from North Carolina and appreciates the sentiment and want to work with the neighbors and a good business that the town can be proud of.

Mr. Books thanked the applicants for allowing the property to be used by a Mennonite group volunteering to help with storm recovery and Mr. Harley said that it was their pleasure.

Chair Dodgin made a motion to close the evidentiary hearing. The motion was seconded by Nicole Stallings and approved by a vote of 5-0.

The board deliberated and found that:

1. There are unnecessary hardships because while there is an ephemeral stream on the property, it is not a blueline stream and the buffer requirements would cause an issue with internal queuing.
2. The hardship results from conditions that are peculiar to the property because the property was already there and has already been developed as well as the surrounding properties that have also been developed.
3. The hardship did not result from actions taken by the applicant in that the property is already in existence and has already been developed once.
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 because it allows for additional measures to be taken to treat stormwater and prevent more impervious surface from being added.

John Hines made a motion to grant the variance removing the stream buffer and transitional area requirements from the design restrictions. The motion was approved by a vote of 5-0.

VI. COMMUNICATION FROM BOARD OF ADJUSTMENT

None.

VII. COMMUNICATION FROM STAFF

None.

VIII. ADJOURNMENT

With no further business, the meeting was adjourned at 7:10 p.m.

Prepared by:

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Lauren Dodgin, Chair

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Jennifer Tipton, Senior Admin