Town of Black Mountain Staff Report
Board of Adjustment

Case No: V-25-01
Case Name: 200 Old State Ten Rd.

Hearing Date: January 16, 2025
Procedure: Variance Evidentiary Hearing

Address of Variance Request:
200 Old State Ten Road
Black Mountain, NC 28711
Property ID Number (PIN): 0619-77-0021-00000

Applicant:
Tammy Gregg and Brian Gregg
200 Old State Ten Rd.
Black Mountain, NC 28711

Request:
The applicants are requesting a reduction in the size of the Stream Buffer and the Transitional Area that's required per the Stream Buffer Protection Standards, for the placement of an accessory structure.

Town Staff:
Jennifer Tipton, Clerk to Board of Adjustment
Russell Cate, Planner 1/Zoning Administrator

I. SUMMARY OF REQUEST

The applicants are seeking a variance from two watercourse requirements in the Stream Buffer Protection Standards, which is Article IX of Chapter 20 (Environment):

- A stream buffer on each side of watercourses depicted as a solid blue line on the most recent U.S. Geological Survey (USGS) seven and one-half minute quadrangle topographic maps, measured 30 feet horizontally from the top of the stream bank in a direction perpendicular to the stream flow. (Sections 20-381 and 20-382)
- An additional 20-foot transitional area immediately landward of the stream buffer. (Section 20-383)

The project involves the placement of an accessory structure. The applicants submitted the following preliminary site plan:



II. PROCESS – REQUIRED CITY APPROVALS

In addition to this variance, the applicants will need to obtain zoning compliance approval and a building permit that demonstrates compliance with all applicable standards of the Zoning Ordinance and the North Carolina Building Codes.

III. LAND USE

The primary objective of stream buffer protection standards is to maintain land adjacent to streams in an undisturbed vegetative state in order to enhance and maintain water quality, protect stream channel wetlands, minimize stormwater runoff, reduce sedimentation and erosion, conserve plant and wildlife habitat and protect wildlife movement corridors. The standards further this objective (1) by regulating water temperature through shading of the stream bed, (2) by limiting sedimentation from streambank erosion and stormwater flow, and (3) by supporting aquatic life through the provision of organic debris such as leaves and twigs. (Section 20-380)

<u>The Stream Buffer Protection Standards impose the following limitations:</u>

1. The stream buffer shall remain in natural undisturbed forest vegetation and no development or land-disturbing activities shall be undertaken therein except as follows:

> Subject to prior written authorization by the planning director or his/her designee, the following activities may be undertaken within the stream buffer provided they meet all the standards specified herein as well as other applicable provisions of the land use code:

(1) Crossings by streets, driveways, culverts, railroads, recreational features, intakes, docks, utilities, bridges or other facilities shall be allowed provided that they are designed to minimize the amount of intrusion into the stream buffer. Streets and driveways may run generally within and parallel to the stream buffer only where no other access to the property is feasible and when their design minimizes the amount of intrusion into the stream buffer. Crossing with a width of 40 feet or more are permitted only when it has been demonstrated that there is no practical alternative.

(2) Stream buffers may be used for passive recreational activities, such as unpaved or paved trails or greenways, provided that service facilities for such activities, including but not limited to parking, picnicking and sanitary facilities, are located outside of the stream buffer. Where practical, such activities shall be kept at least 15 feet from the stream bank.

(3) Clearing and revegetating the stream buffer pursuant to a plan approved by the planning director when it has been demonstrated that such clearing and revegetation will improve stream buffer's pollutant removal efficiency.

(4) Stormwater control structures and temporary erosion control structures shall be considered utilities for the purposes of this section and may be allowed in stream buffers, provided that:

a. The property owner or applicant demonstrates to the satisfaction of the planning director or his/her designee that such facilities cannot be practicably located outside of the stream buffer, and that any proposed stormwater control structure is sited and designed to minimize disturbance of the stream and stream buffer.

b. Alternate methods of stormwater and erosion control shall be considered prior to approval of such structures in the stream buffers.

c. A vegetated buffer of a width approved by the planning director or his/her designee shall be required around the stormwater control structure.

d. Any land disturbed for these structures shall be revegetated with appropriate native species in accordance with a revegetation plan approved by the planning director or his/her designee.

(5) Sanitary sewer lines, on an alignment generally parallel to the stream, may be allowed in stream buffers, provided that:

a. The property owner or applicant demonstrates in writing to the satisfaction of the public services director that the sanitary sewer lines cannot be practicably located outside of the stream buffer.

b. Design and construction specifications minimize damage to the stream and the possibility of line leakage.

c. The sewer line is located at least 15 feet from the top of the stream bank; and

d. The sanitary sewer plan and a plan for revegetating the stream buffer disturbance shall be approved by the public works director.

(6) Streams may be piped, thereby exempting the piped section of the stream from steam buffer requirements, provided such piping complies with the permitting/certification requirements of the Clean Water Act and any other applicable state and federal regulations. Piping undertaken for the purpose of accommodating public roads, railroads, greenways, recreational facilities and private roads and drives should be designed so that the right-of-way or roadway-and-shoulder width is not more than is

necessary considering the design capacity for the facility and so that the proposed stream piping is not substantially in conflict with the other objectives of this section. Where stream piping is approved, a vegetated buffer area or other device shall be provided at any intake or discharge structure. All buffers and physical improvement related to the stream piping shall be located entirely on the site or, pursuant to easement, on lands adjacent to the site.

(7) Selective removal of invasive exotic species in accordance with a plan approved by the planning director or his/her designee.

(8) View corridors are allowed so long as the soil is undisturbed and the natural forest floor, ground cover and understory vegetation are left intact. Pruning associated with the creation and maintenance of a view corridor is exempt. Thinning of the overstory and mid-canopy trees is permissible with the written authorization of the planning director or his/her designee.

Site plan approval by the planning director or his/her designee shall be required for any of the stream buffer intrusions described above. When any of the activities described above involves land clearing, the cleared area shall be revegetated pursuant to an approved plan. However, where a site plan is not required by any other provision of the land use code, the director of public works is authorized to approve plans for stream piping and erosion control structures in stream buffers.

2. There shall be a 20-foot transitional area immediately landward of the stream buffer which may be graded, landscaped, and/or used for pedestrian or vehicular purposes so long as no impervious materials are utilized.

(Sections 20-383 and 20-385)

Existing Conditions

The subject property is a .33-acre lot in the Highway Business (HB-8) zoning district. The parcel has a 1,084 square foot dwelling unit that was built in 1956, and a 1,008 square foot accessory structure that was built in 1960. (Acreage and structure-size information is from the Buncombe County property record card.)

The subject property is bordered on the north by Old State Ten Road, on the west by Kerlee Heights Road, on the south by Old US 70 Hwy East, and on the east by a lot also zoned HB-8 and that also has a dwelling unit.

Accessory structures are defined in Section 1.2.3 as follows:

> Accessory structure: A structure detached from a principal building and located on the same lot and incidental and subordinate to the principal building or use which is not used as a dwelling unit.

Accessory structures are permitted in the HB-8 zoning district subject to the following:

> **A.** In no case shall an accessory structure be located closer than five feet to the nearest property line.

B. For land used for agriculture or as a bona fide farm that is greater than one acre, there is no limit to the number of accessory structures allowed, provided that such structures shall be incidental to the agricultural use and shall not cover more than 30 percent of the total lot area.

C. In industrial districts, there is no limit to the number of accessory structures provided that such structures are incidental to the industrial use.

D. In commercial districts, unless otherwise provided in a special use permit, no more than two accessory structures shall be permitted per lot.

E. In residential and mixed-use districts, no more than two accessory structures shall be permitted per lot, provided that any such structure shall meet the following requirements:

1. Accessory structures shall not be more than two stories.

2. For lots adjacent to town or state roadways, accessory structures shall be located only in the side or rear yards.

3. For lots not adjacent to town or state roadways, accessory structures may be located in what is determined as the front yard by the zoning administrator. The accessory structure may be located no further forward than the primary structure furthest from the road of any adjacent properties never to be less than the existing setback requirements.

4. Accessory buildings shall not cover more than 30 percent of the required side or rear yards. Accessory structures may require screening at the direction of the zoning administrator if the accessory structure may be considered a nuisance under the town's nuisance regulations or if it is being used for commercial purposes while abutting a residential use or district.

(Section 4.5.4 of Chapter 4)

Below are two images. On the left is an image from Buncombe GIS with the *5 Foot Contours*, *Stream & River* and *2020 – DFIRM Flood Data* layers turned on (parcel is not in the 100-year flood zone) (2023 image). On the right is an image from NOAA (early October 2024 image).





Below are street views of the property – photo on left is from Kerlee Heights Road, photo on right is from Old State Ten Road (photos taken on 12/9/2024):





IV. NOTIFICATION

Notice of the variance request and hearing was mailed to all property owners within 200 feet of the project site. Public notice was posted on the Town bulletin board and on the Town of Black Mountain website on January 2, 2025. Legal notice appeared in the Black Mountain News the weeks of January 2, 2025, and January 9, 2025. The property was posted with a notice listing the time and date of the hearing.

V. ANALYSIS

Item ***6*** in Section 20-385 explains how "streams may be piped, thereby exempting the piped section from stream buffer requirements, provided such piping complies with the permitting/certification requirements of the Clean Water Act and any other applicable state and federal regulations."

The **applicability** section of the Stream Buffer Protection Standards stresses that although the term "stream" is used in the standards, and although the trigger for the standards is any USGS "blue line stream," the standards apply to "all ***watercourses***" depicted on the most recent USGS seven and one-half minute quadrangle topographic map.
At https://water.usgs.gov/wsc/glossary.html is the following:

> **Channel (watercourse):** An open conduit either naturally or artificially created which periodically or continuously contains moving water, or which forms a connecting link between two bodies of water. River, creek, run, branch, anabranch, and tributary are some of the terms used to describe natural channels. Natural channels may be single or braided (see Braiding of river channels). Canal and floodway are some of the terms used to describe artificial channels.

Per Section 2.1.4 of the Town of Black Mountain Land Use Code, a permit is required before work is begun and a permit shall not be issued until the town zoning administrator has provided authorization that the proposed structure is in compliance with the zoning district in which it is located.

Section 1.7.3 (A) of the Town of Black Mountain Land Use Code states that the board of adjustment shall authorize upon application in specific cases such variance from the terms of the town's land use code as will not be contrary to the public interest and where owing to special conditions, a literal enforcement of the provisions of the town ordinances will, in an individual case, result in practical difficulty or unnecessary hardship. Variances are not intended to provide limited relief from regulations in those cases where strict application of a particular requirement will create a practical difficulty or unnecessary hardship prohibiting the use of land in a manner otherwise allowed in the land use code and in a way that the spirit of the town regulations shall be preserved, public safety and welfare secured, and substantial justice done.

Town staff have determined that the applicant's request to hear the variance is in accordance with Section 1.7.1 (A).