TOWN OF BLACK MOUNTAIN
COUNTY OF BUNCOMBE

BEFORE THE BLACK MOUNTAIN
BOARD OF ADJUSTMENT

In the Matter of the Application of	)	
Michael DeLang and Sandra Geisel	)	
For a Variance for Property at 115 East St	)	ORDER
PIN No. 0710-41-7251.00000	)	
	)	

THIS CAUSE, coming on before the Board of Adjustment for the Town of Black Mountain on November 21, 2024, upon the application of Michael DeLang and Sandra Geisel for a setback variance to reduce the rear property line to convert a garage into a secondary dwelling and to reduce the side property line to expand the use of a legally non-conforming accessory structure at 115 East Street in Black Mountain, PIN #0710-41-7251.00000, which is Plat Book 6412 at Page 1246, Buncombe County Registry.

Michael DeLang and Sandra Geisel appeared to present their case.

Ryan Queen was approved as a party with standing.

Wesley Barker, Town Clerk, and Russell Cate, Zoning Administrator, appeared for the Town staff; Brian Gulden attended as counsel to the board, and five members of the Board of Adjustment were in attendance.

The Board of Adjustment, having heard and considered the testimony of town staff, the Applicant, and parties with standing and having considered all the evidence presented by the town staff, the Applicant, and parties with standing, the statements and arguments of the Applicant and parties with standing, 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. Applicants are owners of the property located at 115 East Street, Black Mountain, North Carolina, which has the current PIN number of 0710-41-7251.00000 as shown on the Buncombe County tax maps, also being Plat Book 6412 at Page 1246, 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 15 feet for location of structures from the rear property line (Section 4.6.3.3 of the LUC) and 5 feet from side and rear property lines for accessory structures (Section 4.5.4 of the LUC).

6. The Applicants purchased the property in May of 2024.

7. In August of 2024, the Applicants were made aware that they did not own a five-foot strip of land behind their property.

8. The Applicants desire to convert the existing garage structure into a secondary dwelling and expand the use of the existing accessory structure into an office and workout space.

9. The existing garage meets the setback requirements for accessory structures but not for a dwelling.

10. The existing accessory structure sits 3 feet from the side property line and is legally non-conforming.

11. The Applicant proposes to reduce the rear setback from fifteen feet to seven feet to convert the garage structure into a secondary dwelling and to reduce the side setback from five feet to three feet to expand the use of the accessory structure. .

12. 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).

13. There are unnecessary hardships in that the Applicants purchased the property under the belief that they had enough room to pursue their projects without the need for a variance and have since learned after purchasing and closing on the property that they do not own the five-foot strip behind their parcel.

14. The hardship results from conditions that are peculiar to the property as the buildings are already existing and there is the odd five-foot strip behind the property that was not known

about until after the Applicants closed on the property.

15. The hardship did not result from actions taken by the Applicants or the property owner in that the Applicants purchased the property thinking 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 the five-foot strip and therefore, that took away land that they thought they had to pursue their projects.

16. The requested variance is consistent with the spirit, purpose, and intent of the ordinance such that public safety is secure and substantial justice is achieved because it allows the property owner to use their property for a legal purpose.

BASED UPON THE FOREGOING FINDINGS OF FACT, THIS BOARD by a vote of 5 to 0 concludes that the Applicants should be granted a variance to reduce the rear setback from fifteen feet to seven feet to convert a garage into a secondary dwelling and to reduce the side setback from five feet to three feet to expand the use of an accessory structure.

IT IS NOW, THEREFORE, ORDERED, that the Applicants are granted a variance reducing the rear setback of 115 East Street from fifteen feet to seven feet and reducing the side setback of 115 East Street from five feet to three fee. .

This the _____day of _____, 2025.

_____
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.