TOWN OF BLACK MOUNTAIN
COUNTY OF BUNCOMBE

BEFORE THE BLACK MOUNTAIN
BOARD OF ADJUSTMENT

In the Matter of the Application of)
NNN REIT, LP For a)
Variance for Property at 200 NC 9 Highway) ORDER
PIN No. 0619-35-4293.00000)
)

THIS CAUSE, coming on before the Board of Adjustment for the Town of Black Mountain on November 21, 2024, upon the application of NNN REIT, LP to remove the stream buffer and transitional area requirements for property at 200 NC 9 Highway in Black Mountain, PIN #0619-35-4293.00000, which is Plat Book 5117 at Page 0072, Buncombe County Registry.

Kevin Maruer of Kimley-Horn and Josh Harley of Circle K appeared to present their case.

Jon Brooks, Laurie Brooks, and Scott Roy were approved as parties 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 engineer and leasee of the property located at 200 NC 9 Highway, Black Mountain, North Carolina, which has the current PIN number of 0619-35-4293.00000 as shown on the Buncombe County tax maps, also being Plat Book 5117 at Page 0072, Buncombe County Registry.

4. The property is zoned HB-8.

5. The property is 1.6 acres.

6. The property was formerly used as a bank.

7. The Applicants propose to demolish the existing structure and construct a gas station with convenience store.

8. The Stream Buffer Protection ordinance requires a stream buffer on either side of watercourse depicted as a solid blue line on the most recent USGS map and is measured thirty feet horizontally from the top of the streambank or watercourse in a direction perpendicular to the stream flow (Section 20-382 of the Code of Ordinances).

9. The Stream Buffer Protection ordinance also requires a transitional area of twenty feet immediately landward of the stream buffer (Section 20-383 of the Code of Ordinances).

10. There is an exception that would allow the stream to be piped and would therefore not have to meet the stream buffer and transitional area requirements (Section 20-385 (6) of the Code of Ordinances).

11. The Applicants noted that there is a grate inlet already on the site that is collecting downstream and there is another inlet collecting upstream and the entire area gets captured by at least a ten-year storm.

12. The Applicants have not been able to locate the stream on the most current USGS map nor have they been able to locate a stream on the property per an on-site study conducted by Kimley-Horn.

13. The stream buffer requirements would cause the elimination of the back driveway to Black Mountain Avenue and cause a reduction in the drive aisle widths.

14. The new site will meet all stormwater requirements.

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. There are unnecessary hardships because while there is an ephemeral stream on the property, it is not a blue line stream and the buffer requirements would cause an issue with internal queuing.

17. The hardship results from conditions that are peculiar to the property as the property has already been developed as well as the surrounding properties that have already been developed.

18. The hardship did not result from actions taken by the Applicants or the property owner in that the property is already existing and developed.

19. 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 for additional measures to be taken to treat stormwater and prevent more impervious surface from being added.

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 remove the stream buffer and transitional area requirements.

IT IS NOW, THEREFORE, ORDERED, that the Applicants are granted a variance removing the stream buffer and transitional area requirements from 200 NC 9 Highway.

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.