TOWN OF BLACK MOUNTAIN
BOARD OF ADJUSTMENT

The Black Mountain Board of Adjustment held its regular meeting on Thursday, March 20, 2025, 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

Absent:

David Barley

Staff:

Jennifer Tipton, Senior Admin
Russell Cate, Planner I/Zoning Administrator

The meeting was called to order at 6:02 p.m. and duly constituted and opened for business with a quorum of five (5) regular members.

II. ADOPTION OF AGENDA

Nicole Stallings made a motion to adopt the agenda as presented. The motion was approved by consensus by a vote of 5-0.

III. ADOPTION OF MINUTES

Chloe Brown made a motion to adopt the minutes of April 17, 2025, as written. The motion was approved by consensus by a vote of 5-0.

IV. OLD BUSINESS

None.

V. NEW BUSINESS

1. <u>Variance Request – 500 Blue Ridge Road and 99999 Blue Ridge Road</u>

Chair Lauren Dodgin read the opening statement. Jennifer Tipton swore in all parties wishing to participate in the hearing. John Hines said that he knows one of the applicants but does not have any favored opinion or relationship that would cause a conflict of interest.

Russell Cate provided the board with the staff report of the variance request. The applicant is seeking a variance to be exempt from stream buffer regulations requiring a 30’ buffer horizontally from each side of the top of the bank of the stream and an additional 20’ buffer on each side of the top of the bank for the two unnamed tributaries as they do not exist. The potential buyer is in the due diligence phase of the purchase. Mr. Cate went over the purpose of the stream buffer requirements and also mentioned the eight exceptions that are allowed. Both properties are zoned TR-4 and are gently sloped. Mr. Cate also spoke about the USGS clip in his staff report and that it one hundred percent matches the Buncombe County GIS streams and river layer and applied to all watercourses. There were no questions from the board.

Murphy Fletcher of Maguire, Woods, and Bissette and attorney for the applicant, gave a brief opening statement. Ms. Fletcher stated that there are no water courses where the two lines are demonstrated on both the USGS map and the Buncombe County GIS stream and river layer. There are two reports, one from Hart and Hickman and the other from the Army Corps of Engineer, stating that there are no watercourses. The stream buffer requirements would cause unnecessary hardship as it would restrict the development of the parcel even though the water courses do not exist. Removing the regulations would not undermine the ordinance as the water courses do not exist and there is no other public harm.

Danielle Clark, with Hart and Hickman, appeared as a witness for the applicant. Ms. Clark has a Bachelor of Science in Biology and a Masters in Environmental Management. Ms. Clark has spent the last eleven years working as a wetlands specialist. She received her wetland certification in 2020. Ms. Clark said that Hart and Hickman is an environmental consulting firm. Ms. Fletcher asked that Ms. Clark be admitted as an expert witness and the board admitted Ms. Clark. Ms. Clark said that she attended the Army Corps site visit and that no streams or water courses were revealed other than the Swannanoa River. Both Hart and Hickman and the Army Corps of Engineers conducted site surveys. It is Ms. Clark's opinion that the USGS map is incorrect and that there are no streams or water courses in that location. Chair Dodgin asked about the Army Corps of Engineers wetland data sheets that do show some type of wetland. Ms. Clark confirmed that there is a wetland on the site, but it is not a water course. The Hart and Hickman survey was conducted in December of 2024, and the Army Corps of Engineers survey was conducted in March of 2025.

Elena Terra, 514 Blue Ridge Road, asked about the row of trees along the border of the property and how close the applicant would be able to build to the property lines. Chair Dodgin explained that the question is outside of their purview and that they can only consider the variance that has been requested.

Jeff Hall, 414 Blue Ridge Road, asked if there were aqua ducts on the property. Mr. Hall said that he has been told that there are underground areas of water on the property. Mr. Cate stated that the stream buffer ordinance does not speak to aqua ducts or underground water. Mr. Hall stated that there has been other property in the town that was not able to be built on due to aqua ducts.

Chair Dodgin recalled Ms. Clark. Ms. Clark stated that they did not drill for ground water and only looked at the surface. It is possible for streams to be located underground but they are not regulated by the Army Corps of Engineers. Ms. Clark stated that ground water can be anywhere. The board decided that moving forward, all water related items will be referred to as water courses.

Ms. Fletcher gave a brief closing statement. She said that the applicant meets the requirements for a variance request. She said that based on the ordinance and the staff report, there is nothing on the property where the lines are shown to meet the definition of a water course. Ms. Fletcher said that they have provided sufficient evidence that there are no streams on the property and the

property would be almost undevelopable and restrict the use of the property. She again said that they would not be undermining the environmental protections.

Chloe Brown made a motion to go into recess for deliberations at 6:48 p.m. Ms. Stallings stated that she drove by the property both before and after a rain event and did not notice any water course or running water. Mr. Hines said that the property does get wet after a rain event but does not stay wet or have running water. Chair Dodgin said that she doesn't take this request lightly, but that the applicant has done their due diligence and that while there is a wetland on the property, there are no other streams or water courses connecting to the wetlands. The Swannanoa River is closest navigable water source.

John Hines made a motion to close the evidentiary hearing. The motion was approved by consensus by a vote of 5-0.

The board found the following:

1. The board found by a vote of 5-0 that there are unnecessary hardships that would result from the strict application of the ordinance because restrictions imposed by the ordinance would render the land unusable.
2. The board found by a vote of 5-0 that the hardship does result from conditions that are peculiar to the property because of the location and topography and the incorrect data on the USGS map.
3. The board found by a vote of 5-0 that the hardship did not result from actions taken by the applicant as the data from the USGS map is incorrect.
4. The board found by a vote of 5-0 that 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 as it does not undermine the purpose of the stream buffer ordinance.

Nicole Stallings made a motion to grant the variance as requested. The motion was approved by consensus 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 7:01 p.m.

Prepared by:

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Lauren Dodgin, Chair

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Jennifer Tipton, Senior Admin