TOWN OF BLACK MOUNTAIN
COUNTY OF BUNCOMBE

BEFORE THE BLACK MOUNTAIN
BOARD OF ADJUSTMENT

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| In the Matter of the Application of | ) | |
| Forge Trust f/b/o Pamela K. Collins | ) | |
| And Donald and Pamela Collins, individually | ) | ORDER |
| For a Variance for Property at | ) | |
| 500 Blue Ridge Road and | ) | |
| And 99999 Blue Ridge Road | ) | |
| PIN No. 0609-81-9540.00000 | ) | |
| PIN No. 0609-91-2512.00000 | ) | |

THIS CAUSE, coming on before the Board of Adjustment for the Town of Black Mountain on June 26, 2025, upon the application of Forge Trust f/b/o Pamela K. Collins and Donald and Pamela Collins, individually, to be exempt from be exempt from requiring a thirty-foot buffer horizontally from each side of the top of the bank of the stream and an additional twenty-foot buffer on each side of the top of the bank of the stream for two unnamed tributaries because the unnamed tributaries do not exist at 500 Blue Ridge Road in Black Mountain, PIN #0609-81-9540.00000, which is Plat Book 6359 at Page 1730, and 99999 Blue Ridge Road in Black Mountain, PIN #0609-91-2512.00000, which is Plat Book 4688 at Page 0250, Buncombe County Registry.

Murphy Fletcher of Maguire, Woods, and Bissette, appeared as the representative for the Applicants to present their case.

Jennifer Tipton, Senior Admin, and Russell Cate, Zoning Administrator, appeared for the Town staff and five members of the Board of Adjustment were in attendance.

The Board of Adjustment, having heard and considered the testimony of town staff and the representative for the Applicant, and having considered all the evidence presented by the town staff and the representative for the Applicant and the statements and arguments of the representative of the Applicant, 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 Forge Trust f/b/o Pamela K. Collins and Donald and Pamela Collins, individually, owners of the property located at 500 Blue Ridge Road, Black Mountain, North Carolina, which has the current PIN number of 0609-81-9540.00000 as shown on the Buncombe County tax maps, also being Plat Book 6359 at Page 1730,

Buncombe County Registry.

4. Applicants Forge Trust f/b/o Pamela K. Collins and Donald and Pamela Collins, individually, owners of the property located at 99999 Blue Ridge Road, Black Mountain, North Carolina, which has the current PIN number of 0609-91-2512.00000 as shown on the Buncombe County tax maps, also being Plat Book 4688 at Page 0250, Buncombe County Registry.

5. The properties are zoned TR-4.

6. The properties are 4.59 and 2.93 acres, respectively.

7. The property at 500 Blue Ridge Road has a single-family residence and three accessory structures.

8. The property at 99999 Blue Ridge Road is a vacant piece of land.

9. The Applicants have a potential buyer for the properties that is currently in the due diligence phase of the purchase contract.

10. 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).

11. 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).

12. 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).

13. The representative for the Applicants presented Danielle Clark, as an expert witness.

14. Danielle Clark is an employee of Hart and Hickman, an environmental consulting firm, with a specialty in wetland designation.

15. Danielle Clark has a Bachelor of Science in Biology and a Masters in Environmental Management.

16. Danielle Clark was admitted as an expert witness.

17. Hart and Hickman conducted a site survey of the property in December of 2024 and found no streams or water courses where the lines are demonstrated on the USGS map and the Buncombe County GIS stream and river layer.

18. The Army Corps of Engineers conducted a site survey of the property in March of 2025 and found no streams or water courses where the lines are demonstrated on the USGS map and the Buncombe County GIS stream and river layer.

19. The closest navigable water was determined as the Swannanoa River.

20. 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).

21. There are unnecessary hardships because the ordinance because restrictions imposed by the ordinance would render the land unusable.

22. The hardship results from conditions that are peculiar to the property because of the location and topography and the incorrect data on the USGS map.

23. The hardship did not result from actions taken by the Applicants or the property owner in that the data from the USGS map is incorrect.

24. 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 as it does not undermine the purpose of the stream buffer ordinance.

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 be exempt from requiring a thirty-foot buffer horizontally from each side of the top of the bank of the stream and an additional twenty-foot buffer on each side of the top of the bank of the stream for the two unnamed tributaries that do not exist.

IT IS NOW, THEREFORE, ORDERED, that the Applicants are granted a variance exempting them from requiring a thirty-foot buffer horizontally from each side of the top of the bank of the stream and an additional twenty-foot buffer on each side of the top of the bank of the stream for the two unnamed tributaries that do not exist for 500 Blue Ridge Road and 99999 Blue Ridge Road.

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.**