Town of Black Mountain Staff Report
Board of Adjustment

Case No: V-25-04
Case Name: 15 Avena St

Hearing Date: July 17, 2025
Procedure: Variance Evidentiary Hearing

Address of Variance Request:
15 Avena St.
Black Mountain, NC 28711
Property ID Number (PIN): 060943986800000

Applicant:
David and Brooke Cherry
15 Avena St.
Black Mountain, NC 28711

Request:
The applicants are seeking a variance from the Office and Institutional (OI-6) zoning district's 30-foot front setback requirement. As part of doing repair of Helene damage, they would like the rebuilt front porch to be 26 feet and six inches from the right of way line. (The right of way line is slightly further back than the property line, and the applicants are complying with the Land Use Code requirement to measure from the further back of the two.) There's a roof overhang that extends one foot and 10 inches into the setback, and code allows such an encroachment of up to one foot and six inches.

Thus, the applicants are seeking a reduction in the front setback requirement of three feet and eight inches.

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

I. SUMMARY OF REQUEST

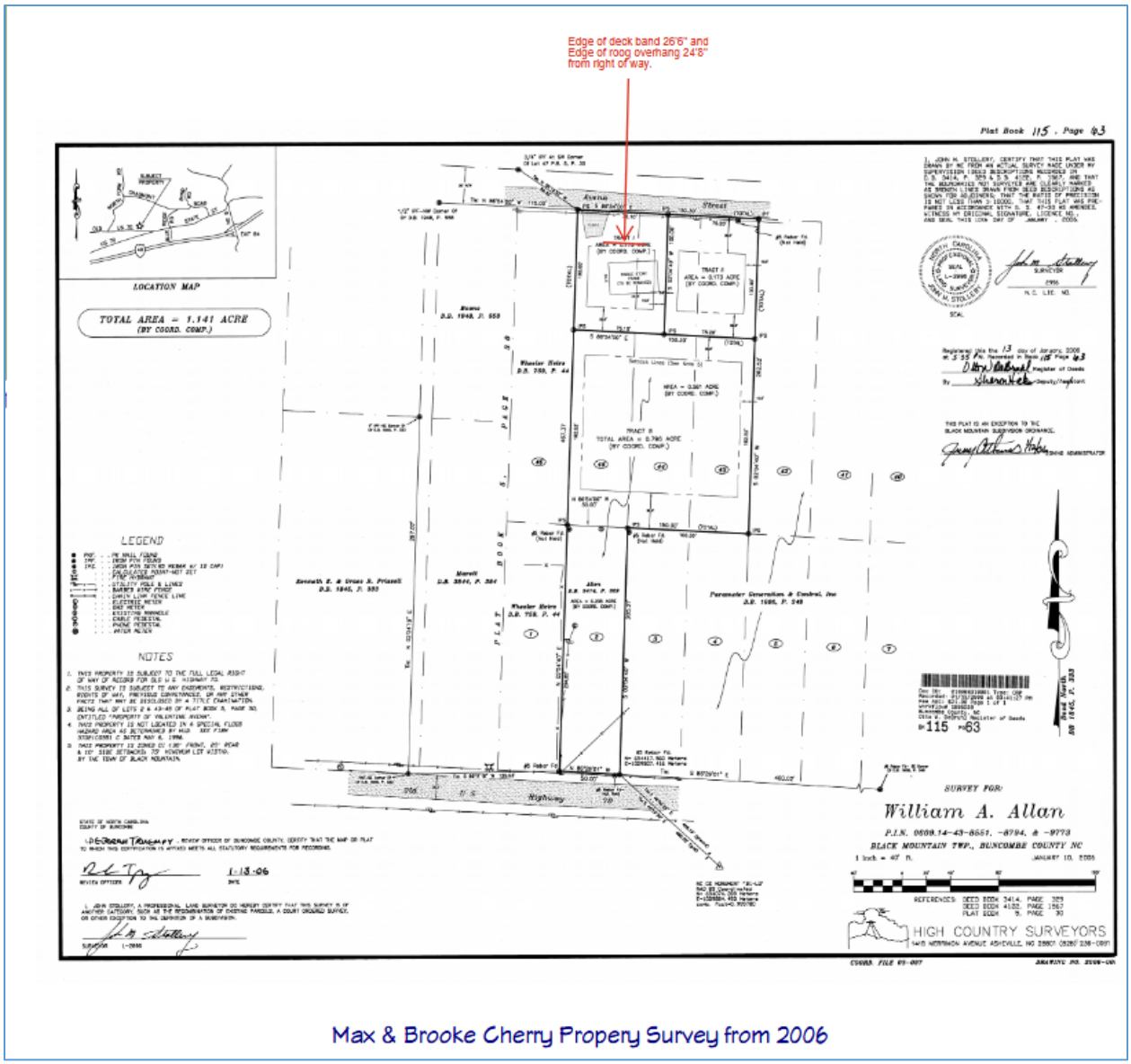
The applicants are seeking a variance from one of the requirements stated in the *Minimum Yard Requirements* portion of **Dimensional Requirements by Zoning District** (which is Section 4.7.15 of Chapter 4 of the Land Use Code): in the Office and Institutional (OI-6) zoning district, the front setback requirement is 30 feet.

Section 4.4.3 of Chapter 4 explains that the setback measurement is taken from the right of way line or the property line, whichever is further back, and that the measurement is "to the nearest portion of the building or structure."

The site plan notes a roof overhang extending one foot and 10 inches into the setback area. Item ***J*** in Section 4.4.3 of Chapter 4 explains that architectural features like roof overhangs can extend

up to one foot and six inches into required setbacks. So, two inches of the project's roof overhang count as part of the front yard coverage area. And thus, even though the edge of the deck is only 26 feet and six inches from the right of way line, the project is 26 feet and four inches from the right of way line, resulting in the requested front setback reduction of three feet and eight inches.

Below is the applicant's site plan, which shows proper measurement of the front setback (the Land Use Code requires that the front setback be measured from the right-of-way line or the property line, whichever is further back).



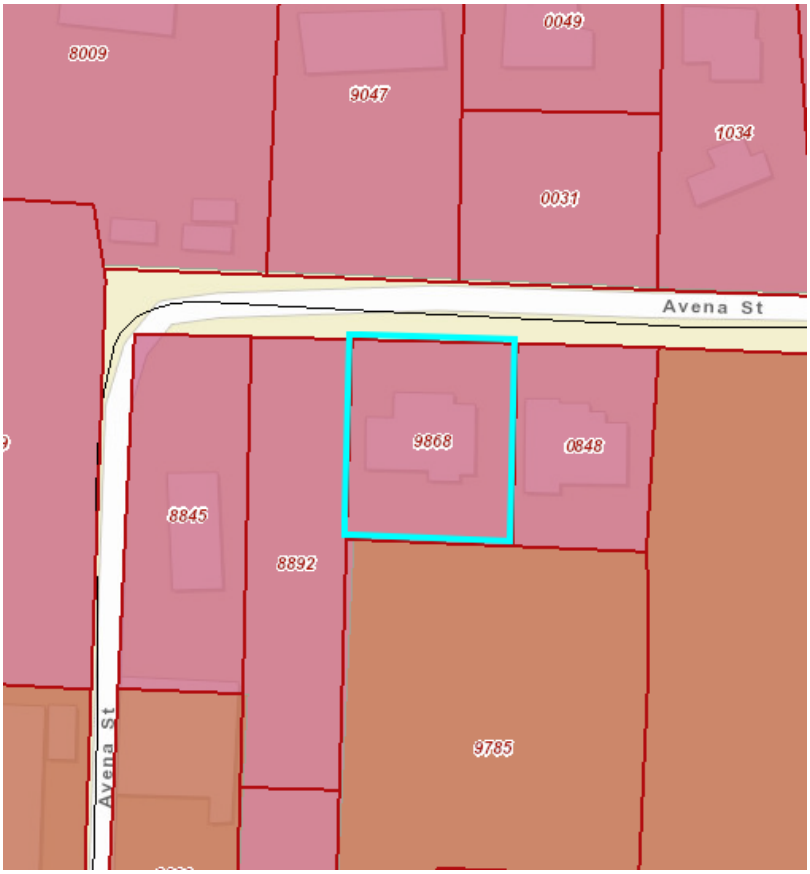
Max & Brooke Cherry Propery Survey from 2006

II. PROCESS – REQUIRED CITY APPROVALS

In addition to this variance, the applicant 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. ZONING AND LAND USE

The property is in the Office and Institutional (OI-6) zoning district. This clip is from Buncombe GIS – purple is OI-6, and orange is Highway Business (HB-8) (***9868*** is the subject property):



The *Minimum Yard Requirements* in OI-6 are:

	Residential	Non-Residential
Front:	30 feet	40 feet
Side:	10 feet	30 feet
Rear:	20 feet	30 feet (40 feet if abutting a residential district)

Reference: Section 4.7.15 (Dimensional Requirements by Zoning District) of Chapter 4.

The surrounding lots are:

	North	South	East	West
Adjacent Zoning Designation	OI-6	HB-8	OI-6	OI-6
Adjacent Land Uses	Single-family home	.8-acre lot that has no buildings	Single-family home	Single-family home

The *Purpose and Intent* of the OI-6 zoning district is:

> The office and institutional district is established to provide transition between residential and commercial districts; to accommodate a mixture of residential, office, and institutional uses in conditions of good health and safety; to accommodate planned developments that are institutional in nature and which may have multiple buildings and uses within one property; and to protect property values of residential, institutional and professional uses within the district in a way that is mutually beneficial.
>
> Reference: Section 4.7.5 (Office and Institutional District - OI-6) of Chapter 4.

Existing Conditions

According to the Buncombe County Property Record Card for 15 Avena Street, the parcel has a four-bedroom, single family home that has a total finished area of 2,650 square feet. The county lists the lot size as .17 acre. The overall slope of the lot is 7.44 percent (according to https://www.mapwnc.org/find-slope-for-parcel).

Below is a clip from Buncombe GIS with the *5 Foot Contours*, *Stream & River* and *2020 – DFIRM Flood Data* layers turned on (property does not have any USGS watercourses and is not in the 100-year flood zone). ***9868*** is the subject property. Note: image is *Post Helene 2024*.



Below is a street view of the lot (photo taken on 7/9/2025).



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 July 2, 2025. Legal notice appeared in *Black Mountain News* the weeks of July 10, 2025, and July 17, 2025. The property was posted with a notice listing the time and date of the hearing.

V. ANALYSIS

The context of the variance request is the rebuilding of a front porch. Front porches are common features on homes in the Town of Black Mountain.

Section 4.4.3 (A) of the Land Use Code states that "Yard and setback requirements shall be met unless a variance is granted by the Board of Adjustment."

Per Section 2.1.4 of the 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 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 has determined that the applicants' request to hear the variance is in accordance with Section 1.7.1 (A).