Town of Black Mountain
Planning & Development
304 Black Mountain Avenue ♦ Black Mountain ♦ North Carolina ♦ 28711
Phone: 828-419-9300 ♦ Fax: 828-669-2030 ♦ TDD: 1-800-735-2962

December 11, 2025

Chair to the Board of Adjustment
160 Midland Avenue
Black Mountain, NC 28711

VIA Email and Regular Mail

RE: 19 Timber Park Drive Appeal to the Board of Adjustment

Dear Chair,

Pursuant to NCGS §160D-405(e), please find enclosed the Record in the above-referenced case, which I am transmitting to the Board of Adjustment. If you have any questions, please do not hesitate to contact me.

Sincerely,

Jennifer Tipton
Clerk to Board of Adjustment

Enclosures

CC: Shane and Erin Lunsford
Brian Gulden, Esq.
Board of Adjustment Members
Russell Cate, Planner I/Zoning Administrator
Michelle Kennedy, Planning Director

BEFORE THE TOWN OF BLACK MOUNTAIN BOARD OF ADJUSTMENT
BUNCOMBE COUNTY

SHANE AND ERIN LUNSFORD)
APPEAL OF ZONING ADMINISTRATOR DECISION)
19 TIMBER PARK DRIVE)
BLACK MOUNTAIN, NC 28711)

RECORD

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Jennifer Tipton

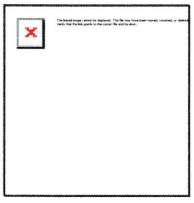
From: Russell Cate
Sent: Wednesday, November 26, 2025 9:25 AM
To: Jennifer Tipton
Subject: FW: can you please give me an update on the containers?

First email

From: Russell Cate
Sent: Tuesday, July 29, 2025 4:01 PM
To: shane.lunsford@gmail.com; eelunsford@gmail.com
Subject: can you please give me an update on the containers?

Good afternoon Shane and Erin,
Can you please give me an update on the containers?
Thank you.

Russell B. Cate, CZO
Planner, Zoning Administrator
828-419-9373
Russell.cate@tobm.org



Town of Black Mountain, NC
304 Black Mountain Ave. | Black Mountain NC 28711
www.townofblackmountain.org

From: Shane Lunsford <shane.lunsford@gmail.com>
Sent: Thursday, July 10, 2025 3:08 PM
To: Ronnie McAbee <ronnie.mcabee@tobm.org>; Erin <eelunsford@gmail.com>
Subject: Container at 19 Timber Park

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good afternoon Ronnie,

Sorry I missed you the other day. I wanted to reach out and follow up from your visit. We are working to relocate the containers and sell our home. Our hope is to have a new location for them in the near future.
I do apologize for any complaints you have been getting about the containers.

I will keep you updated and if you need anything please do not hesitate to contact me.

Thank you,

Shane & Erin Lunsford
828-280-9639

Jennifer Tipton

From: Russell Cate
Sent: Wednesday, November 26, 2025 9:25 AM
To: Jennifer Tipton; Jennifer Tipton
Subject: FW: can you please give me an update on the containers?

2nd email

From: Russell Cate
Sent: Tuesday, July 29, 2025 4:32 PM
To: Shane Lunsford <shane.lunsford@gmail.com>
Cc: eelunsford@gmail.com
Subject: RE: can you please give me an update on the containers?

Thank you for this update, Shane.

Russell B. Cate, CZO
Planner, Zoning Administrator
828-419-9373
Russell.cate@tobm.org



Town of Black Mountain, NC
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www.townofblackmountain.org

From: Shane Lunsford <shane.lunsford@gmail.com>
Sent: Tuesday, July 29, 2025 4:26 PM
To: Russell Cate <russell.cate@tobm.org>
Cc: eelunsford@gmail.com
Subject: Re: can you please give me an update on the containers?

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Good afternoon Russell,

We are working to sell the house and currently looking for an alternate location for them to be moved to. I am hoping in the next two weeks to have a location and get them scheduled to be moved.

If you know of any places that allow temporary placement of containers please let us know.

We are also happy to apply for a permit for them if that is a simpler temporary solution until we can get them relocated which will happen either way as we are selling the home.

Thank you,

Shane Lunsford

On Tue, Jul 29, 2025 at 4:01 PM Russell Cate <russell.cate@tobm.org> wrote:

> Good afternoon Shane and Erin,
>
> Can you please give me an update on the containers?
>
> Thank you.

Russell B. Cate, CZO

Planner, Zoning Administrator

828-419-9373

Russell.cate@tobm.org

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I will keep you updated and if you need anything please do not hesitate to contact me.

Thank you,

Shane & Erin Lunsford

828-280-9639

Jennifer Tipton

From: Russell Cate
Sent: Wednesday, November 26, 2025 9:25 AM
To: Jennifer Tipton
Subject: FW: can you please give me an update on the containers?
Attachments: residential_permit_application_20240605074546 5415.pdf

3rd email

From: Russell Cate
Sent: Tuesday, July 29, 2025 5:03 PM
To: Shane Lunsford <shane.lunsford@gmail.com>
Cc: eelunsford@gmail.com
Subject: RE: can you please give me an update on the containers?

Hi Shane,
They are well beyond the Code's 90-day allowance, so please remove them immediately.

If you're converting them to accessory structures, this week submit a residential permit application for two accessory structures. The application is attached. Submit completed application to Jennifer Tipton, Permit Coordinator: Jennifer.tipton@tobm.org
Another option for permit application is:

Permit Application System (GovWell): https://app.govwelltech.com/black-mountain
Put "N/A" for items that are not applicable.
If you have questions about the permit application process, contact Jennifer Tipton, Permit Coordinator, at Jennifer.tipton@tobm.org, 828-419-9371.

This is the definition of accessory structure:
A structure detached from a principal building and located on the same lot and incidental and subordinate to the principal building or use which is not used as a dwelling unit.

These are the requirements:

No more than two accessory structures are permitted per lot.

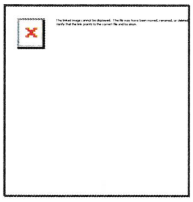
An accessory structure cannot be more than two stories.

Must be located in the side or rear yards, and cannot be closer than five feet to the side and rear property lines. These are the definitions of side and rear yard:

Yard, rear: A space extending across the full width of the lot between the principal building and the rear lot line and measured perpendicular to the building at closest point to rear lot line.
Yard, side: A space extending from the front yard to the rear yard between the principal building and side lot line and measured perpendicular from the side lot line to the closest point of the principal building.

Thank you.

Russell B. Cate, CZO
Planner, Zoning Administrator
828-419-9373
Russell.cate@tobm.org

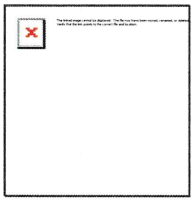


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Thank you for this update, Shane.

Russell B. Cate, CZO
Planner, Zoning Administrator
828-419-9373
Russell.cate@tobm.org



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Good afternoon Russell,

We are working to sell the house and currently looking for an alternate location for them to be moved to. I am hoping in the next two weeks to have a location and get them scheduled to be moved.

If you know of any places that allow temporary placement of containers please let us know.

We are also happy to apply for a permit for them if that is a simpler temporary solution until we can get them relocated which will happen either way as we are selling the home.

Thank you,

Shane Lunsford

On Tue, Jul 29, 2025 at 4:01 PM Russell Cate <russell.cate@tobm.org> wrote:

> Good afternoon Shane and Erin,
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> Can you please give me an update on the containers?
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Russell B. Cate, CZO

Planner, Zoning Administrator

828-419-9373

Russell.cate@tobm.org

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Subject: Container at 19 Timber Park

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Good afternoon Ronnie,

Sorry I missed you the other day. I wanted to reach out and follow up from your visit. We are working to relocate the containers and sell our home. Our hope is to have a new location for them in the near future.

I do apologize for any complaints you have been getting about the containers.

I will keep you updated and if you need anything please do not hesitate to contact me.

Thank you,

Shane & Erin Lunsford

828-280-9639

Jennifer Tipton

From: Russell Cate
Sent: Wednesday, November 26, 2025 9:26 AM
To: Jennifer Tipton
Subject: FW: a heads up about the comment (corrections-needed) I posted to #BLG-25-0374 (two accessory structures)
Attachments: Sec. 1.7. 3 - Variances.pdf; variance_application.pdf

Final email

From: Russell Cate
Sent: Friday, October 31, 2025 10:32 AM
To: shane.lunsford@gmail.com
Subject: a heads up about the comment (corrections-needed) I posted to #BLG-25-0374 (two accessory structures)

Hi Shane,
I want to give you a heads up that I posted this comment (corrections-needed) in GovWell for your permit - # BLG-25-0374 (two accessory structures):

> Timber Park Drive is a town roadway. Item (E) (2) in Section 4.5.4 of Chapter 4 states: "For lots adjacent to town or state roadways, accessory structures shall be located only in the side or rear yards."
>
> Revise site plan to show that each of the two accessory structures is in the side or rear yard.
>
> Add enough detail on site plan showing conformity with the requirement stated in item (E) (4): "Accessory structures cannot cover more than 30 percent of the yard they're in." Also, depict the street on the site plan.
>
> On revised site plan, include measurements showing that each of the two accessory structures is no closer than FIVE FEET to the side and rear property lines.
>
> [Definition of accessory structure: A structure detached from a principal building and located on the same lot and incidental and subordinate to the principal building or use which is not used as a dwelling unit.]

The location requirement for accessory structures is something for which you can seek a variance from the Board of Adjustment. I've attached Section 1.7.3 (Variances) as well as the variance application.

The variance application fee, which covers the legal and administrative costs of the hearing that the BOA holds in considering a variance application, is about $670, paid at time of submission of application. If you need the exact amount, let me know.

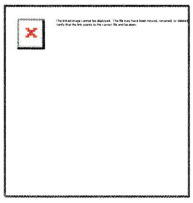
The paper version of the application's attached, but note that any application can be submitted electronically:

Permit Application System (GovWell): https://app.govwelltech.com/black-mountain

Put "N/A" for items that are not applicable.
If you have questions about the permit application process, contact Jennifer Tipton, Permit Coordinator, at Jennifer.tipton@tobm.org, 828-419-9371.
(If you complete the paper version of an application, submit it to Jennifer.)

Thank you.

Russell B. Cate, CZO
Planner, Zoning Administrator
828-419-9373
Russell.cate@tobm.org



Town of Black Mountain, NC
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Town of Black Mountain
Building, Planning and Zoning
160 Midland Avenue ♦ Black Mountain ♦ North Carolina ♦ 28711
Phone: 828-419-9300 ♦ Fax: 828-669-2030 ♦ TDD: 1-800-735-2962

ZONING ORDINANCE VIOLATION

September 23, 2025

Shane Lunsford and Erin Lunsford
19 Timber Park Dr.
Black Mountain, NC 28711

RE: Zoning Ordinance Violation at 19 Timber Park Drive (Buncombe County Property ID Number 061869152900000), Black Mountain, NC 28711

Dear Property Owners,

A complaint of a zoning ordinance violation was received by this office. The violation is regarding storage units that have been in place for more than 120 days at 19 Timber Park Drive (Buncombe County Property ID Number 061869152900000). Item ***B*** in Section 4.7.13.3 (Temporary Uses) of Chapter 4 of Appendix A (Land Use Code) lists the requirements for storage units:

> Requirements for storage units or "PODS"
> - This section applies to temporary, self-contained storage units, not including trailers for office use or temporary shelter, which are intended to be picked up and moved to various locations on demand.
> - The maximum time a temporary storage until shall be placed on a parcel is 120 days.
> - PODS shall be placed so as not to interfere with traffic or as to create a traffic hazard.

The two storage units have been at 19 Timber Park Drive since no later than January of this year.

Please know that it is a violation of the Code of Ordinances to establish and maintain a use that is not permitted. Section 4.3.1 (A) of Chapter 4 explains that use of land must conform with zoning requirements:

> No building or land shall be used or occupied and no building or structure or part thereof shall be erected, moved or structurally altered except in conformity with the town zoning regulations.

Note that per state statute, there is no such thing as a “use variance.” In other words, the Board of Adjustment is not allowed to consider an application from a property owner to establish a use that’s not permitted.

You are required to remove the storage units from your property.

The Town's Code of Ordinances is available online at:
https://library.municode.com/nc/black_mountain/codes/code_of_ordinances

CORRECTIVE ACTION REQUIRED

You are hereby required to remove the storage units from your property.

The property must be brought into compliance within fifteen (15) days of receipt of this notice. Failure to comply may result in a notice and citation for which a civil penalty of $50.00 shall be assessed per day. Pursuant to Chapter 1, Section 1.11.6 of the Town of Black Mountain Land Use Code, this enforcement decision may be appealed to the Board of Adjustment following all procedures documented therein and pasted below.

Any questions relating to this warning notice should be directed to this office.

Thank you for your cooperation in this matter.

Respectfully,

Russell Cate, Planner / Zoning Administrator (phone: 828-419-9373; email: russell.cate@tobm.org)

1.11.6 Notices of violations and right to appeal.

A. When work or activity has been undertaken in violation of state law, this code or the terms of a development approval, a written notice of violation may be issued by the responsible enforcement official. The notice of violation shall be delivered by personal delivery, electronic delivery, or first-class mail to all responsible parties. The notice of violation may be posted on the property.

B. The notice of violation shall include a description of the violation and the actions necessary to correct the violation and shall require such remedial action be taken within a prescribed time period not to exceed 90 days. The enforcement officer may extend the 90-day period at his or her discretion for reasonable mitigating circumstances, but must document the reasons for the extension. Enforcement officers may waive penalties in cases where emergency or temporary repairs have been made out of necessity for the welfare and safety of the public or structure.

If the violation at issue is a violation of the State Building Code, the property owner or party responsible for the violation may appeal the issuance of the citation to the Commissioner of Insurance pursuant to N.C.G.S. § 160D-1127.

For all other violations, the property owner or party responsible for the violation may appeal the issuance of the citation to the board of adjustment within 30 days of the date of the receipt of the written citation by filing an appeal application with the town clerk.

The town may use any combination of the actions and penalties provided in this section to prevent, correct, stop, abate, or penalize a violation of the development regulations.

1.7.3 Variances.

A. The board of adjustment shall authorize upon application in specific cases such variance from the terms of the town's development regulations as will not be contrary to the public interest and were owing to special conditions, a literal enforcement of the provisions of town zoning regulations will, in an individual case, result in practical difficulty or unnecessary hardship. Variances are 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 under the development regulations and in a way that the spirit of the town zoning regulations shall be preserved, public safety and welfare secured, and substantial justice done.

B. Variance requests pertaining to property, signs, or structures within the town's designated historic district, or on structures designated on the National Register, must be reviewed by the town's historic preservation commission and a recommendation in the form of a certificate of appropriateness provided prior to the board of adjustment's deliberations

C. The existence of a nonconforming use of neighboring land, building or structures in the same district or of permitted or nonconforming uses in other districts shall not constitute a reason for a requested variance.

D. In no event shall the board of adjustment grant a variance which would:

   1. Allow the establishment of a use which is not otherwise allowed in a zoning district or which would change the zoning district classification or the district boundary of the property in question.

   2. Vary from the flood protection provisions within the designated floodway district in any way which would result in any increase in the flood levels during the regulatory flood discharge or threaten the public safety (see flood hazard protection ordinance concerning variances).

   3. Conflict with the North Carolina State Building Code, the North Carolina Fire Code, or any other state code unless otherwise authorized by laws and regulations.

   4. Permit the creation of a nonconforming lot.

   5. Deviate from the sign regulations within the sign ordinance unless the requested variance is within the town's historic district and the variance would further the goals of the town's historic preservation commission.

E. A variance may be granted in the individual case of unnecessary hardship upon the board of adjustment being able to establish the following findings:

   1. That unnecessary hardship would result from the strict application of the development regulations. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property;

   2. That 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;. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability;

   3. That 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. That the requested variance is consistent with the spirit, purpose, and intent of the development regulations, such that public safety is secured, and substantial justice is achieved.

F. After the board of adjustment approves a variance, the applicant shall follow all appropriate procedures set forth in these regulations for the receipt of permits, certificates, and other approvals necessary in order to proceed with development.

TOWN OF BLACK MOUNTAIN PLANNING AND DEVELOPMENT SERVICES

APPEAL FORM www.townofblackmountain.org

APPELLANT INFORMATION	
Name: Shane + Erin Lunsford	
Address: 19 Timber Park Dr, Black MTN, NC 28711	
Phone #: 828-280-9639	Email: shane.lunsford@gmail.com

APPEAL FROM DECISION OF ZONING ADMINISTRATOR

This is an appeal from a decision of the Zoning Administrator, to wit:

AFFECTED PROPERTY	
Address: 19 Timber Park Dr, Black Mountain, NC 28711	
PIN #: 0618691529060000	Zoning Classification:

GROUNDS FOR APPEAL

Containers were used during Disaster mitigation. Upheld loss of Bussiness Verchouse. Today containers serve household storage + Business storage.

STATEMENT AND SUBSTANTIATION OF STANDING

Grounds for appeal = Disaster Mitigation from Helene

ACKNOWLEDGEMENT

Appellant	Date: 09/26/2025
Attorney for Appellant	Date:

OFFICE USE ONLY

Date Received:	Received by:

Town of Black Mountain
Building, Planning and Zoning
160 Midland Avenue • Black Mountain • North Carolina • 28711
Phone: 828-419-9300 • Fax: 828-669-2030 • TDD: 1-800-735-2962

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> - This section applies to temporary, self-contained storage units, not including trailers for office use or temporary shelter, which are intended to be picked up and moved to various locations on demand.
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> - PODS shall be placed so as not to interfere with traffic or as to create a traffic hazard.

The two storage units have been at 19 Timber Park Drive since no later than January of this year.

Please know that it is a violation of the Code of Ordinances to establish and maintain a use that is not permitted. Section 4.3.1 (A) of Chapter 4 explains that use of land must conform with zoning requirements:

> No building or land shall be used or occupied and no building or structure or part thereof shall be erected, moved or structurally altered except in conformity with the town zoning regulations.

Note that per state statute, there is no such thing as a "use variance." In other words, the Board of Adjustment is not allowed to consider an application from a property owner to establish a use that's not permitted.

You are required to remove the storage units from your property.

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https://library.municode.com/nc/black_mountain/codes/code_of_ordinances

CORRECTIVE ACTION REQUIRED

You are hereby required to remove the storage units from your property.

The property must be brought into compliance within fifteen (15) days of receipt of this notice. Failure to comply may result in a notice and citation for which a civil penalty of $50.00 shall be assessed per day. Pursuant to Chapter 1, Section 1.11.6 of the Town of Black Mountain Land Use Code, this enforcement decision may be appealed to the Board of Adjustment following all procedures documented therein and pasted below.

Any questions relating to this warning notice should be directed to this office.

Thank you for your cooperation in this matter.

Respectfully,

Russell Cate, Planner / Zoning Administrator (phone: 828-419-9373; email: russell.cate@tobm.org)

1.11.6 Notices of violations and right to appeal.

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B. The notice of violation shall include a description of the violation and the actions necessary to correct the violation and shall require such remedial action be taken within a prescribed time period not to exceed 90 days. The enforcement officer may extend the 90-day period at his or her discretion for reasonable mitigating circumstances, but must document the reasons for the extension. Enforcement officers may waive penalties in cases where emergency or temporary repairs have been made out of necessity for the welfare and safety of the public or structure.

If the violation at issue is a violation of the State Building Code, the property owner or party responsible for the violation may appeal the issuance of the citation to the Commissioner of Insurance pursuant to N.C.G.S. § 160D-1127.

For all other violations, the property owner or party responsible for the violation may appeal the issuance of the citation to the board of adjustment within 30 days of the date of the receipt of the written citation by filing an appeal application with the town clerk.

The town may use any combination of the actions and penalties provided in this section to prevent, correct, stop, abate, or penalize a violation of the development regulations.

LEGAL NOTICE

BLACK MOUNTAIN BOARD OF ADJUSTMENT

EVIDENTIARY HEARING

Thursday, December 18, 2025, at 6:00 p.m.

The Black Mountain Board of Adjustment will meet on **Thursday, December 18, 2025, at 6:00 p.m**. in the Council Room in the Town Hall Building, 160 Midland Avenue, Black Mountain, NC. The purpose of this meeting is to hear an appeal of the Zoning Administrator's decision for 19 Timber Park Drive, PIN #0618-69-1529.00000, regarding shipping containers being used for storage for over a year.

The meeting is open to the public.

_____

Jennifer Tipton
Senior Admin

The Town of Black Mountain is committed to providing accessible facilities, programs and services for all people in compliance with the Americans with Disabilities Act (ADA). Should you need assistance or a particular accommodation for this meeting please contact, Jennifer Tipton at 419-9371 or by email at Jennifer.tipton@tobm.org.

Posted to the Town Bulletin Board 12/01/2025
Published in the Black Mountain News 12/04/2025 and 12/11/2025

www.townofblackmountain.org

CERTIFICATE OF SERVICE

This is to certify that the foregoing Record has been duly served by deposit a copy of the same in the United States Mail, first-class, postage pre-paid, as well as by electronic mail, to the following:

Mr. and Mrs. Shane Lunsford
19 Timber Park Drive
Black Mountain, NC 28711
Shane.lunsford@gmail.com

Mr. Brian Gulden, PA
11 N Market Street
Asheville, NC 28801
bgulden@vwlawfirm.com

Lauren Dodgin
Board of Adjustment Chair
PO Box 847
Black Mountain, NC 28711
ladodgin@gmail.com

John Hines
Board of Adjustment Member
203 S Blue Ridge Road
Black Mountain, NC 28711
John.hines@gmail.com

Nicole Stallings
Board of Adjustment Member
267 Fern Way
Black Mountain, NC 28711
Ndstallings01@yahoo.com

Linda Brinson
Board of Adjustment Member
251 Avena Road, Apt. 9
Black Mountain, NC 28711
lindabrinson@yahoo.com

David Barley
Board of Adjustment Member
301 View Street
Black Mountain, NC 28711
barleyd@gmail.com

Mary Hall
Board of Adjustment Alternate Member
545 Sweet Birch Park Lane
Black Mountain, NC 28711
maryehall@maryehall.com

Ted Rausch
Board of Adjustment Alternate Member
122 Louisa Street
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