Statement in Support of Application for a Dimensional Variance

Town of Black Mountain Board of Adjustment

Applicants: Darah and Emily Bazargan

504 Pearl View Drive
Black Mountain, NC 28711 (Lot 1)

Members of the Board of Adjustment:

We respectfully request a dimensional variance from the required **15-foot rear setback** to allow an existing **open accessory structure (pergola)** associated with our rear deck to remain in its current location.

The rear deck and pergola were constructed as part of the same outdoor living project. The rear deck is being reviewed through the Town's normal permitting process. This application requests zoning relief **only for the pergola**.

This request is based on the physical characteristics of our property rather than on personal preference or convenience. The location of the residence, the required rear setback, the rising topography immediately behind the home, the retaining wall required because of that topography, and the neighboring driveway combine to create a constrained building envelope behind the residence.

During discussions with Town staff, we learned that zoning relief would be necessary because of these existing site conditions. We respectfully ask the Board to evaluate our request under the Town's variance standards.

Thank you for your time and consideration.

Respectfully,

Darah *Emily*

Darah Bazargan Emily Bazargan

SUMMARY OF KEY FACTS

Property

504 Pearl View Drive, Black Mountain, NC (Lot 1)

Variance Requested

A dimensional variance from the required **15-foot rear setback** for an **open accessory structure (pergola)** associated with the rear deck.

The rear deck is being reviewed through the Town's normal permitting process. **This application requests zoning relief only for the pergola.**

Existing Physical Conditions

- The required rear setback begins approximately **11 inches behind the rear wall of the house.**
- The ground rises immediately behind the residence, requiring a retaining wall.
- The retaining wall limits where structural support posts can reasonably be located.
- Approximately **28 inches of the neighboring driveway extends onto our property**, further limiting the usable area adjacent to the outdoor living space.
- Together, these permanent site conditions create a constrained building envelope behind the residence.

Why a Variance Is Needed

Because of these existing site conditions, there is **no practical compliant location for an open accessory structure that provides reasonable use of the rear deck.**

The requested variance represents the minimum relief necessary.

PROJECT DESCRIPTION

This application requests a dimensional variance from the required **15-foot rear setback** to allow an existing **open, unenclosed accessory structure (pergola)** associated with the rear deck to remain in its present location.

The pergola provides shade and enhances the functionality of the rear outdoor living area. It does not create enclosed living space, increase the footprint of the residence, change the residential use of the property, or interfere with neighboring properties.

The requested variance is limited to the location of the pergola and its supporting posts.

PROJECT BACKGROUND

As part of constructing a rear deck and associated pergola, we worked with the Town's Building Department to better understand the applicable zoning and permitting requirements.

Through that process, we learned that while the deck could proceed through the normal permitting process, the pergola requires a dimensional variance because of the required rear setback and the physical characteristics of our property.

We are requesting this variance so the Board may determine whether those existing site conditions justify the requested relief. Our goal throughout this process has been to work with the Town and obtain the appropriate approvals through the Town's established review and permitting process.

PROPERTY OVERVIEW

Lot 1 contains several permanent physical characteristics that substantially limit the available building area behind the residence.

These include:

- the location of the residence on the lot;
- the required rear setback, which begins approximately **11 inches behind the rear wall of the house**;
- the rising topography immediately behind the residence;
- the retaining wall required to support that higher elevation; and
- the neighboring driveway adjacent to the rear outdoor living area, with approximately **28 inches of the paved driveway extending onto our property**.

Taken together, these existing conditions significantly constrain the available area for an open accessory structure serving the rear deck.

STATEMENT OF HARDSHIP

The hardship results from the property's existing physical characteristics rather than from the pergola itself.

Because the required rear setback begins approximately **11 inches behind the rear wall of the residence**, very little area exists behind the home before the setback begins.

Immediately behind the deck, the ground elevation rises, making the retaining wall necessary to retain the higher grade. This existing topography limits where structural support posts can reasonably be located.

The neighboring driveway borders the outdoor living area, and a portion extends onto our property, further reducing the practical use of that area.

Together, these permanent physical conditions create a constrained building envelope that leaves **no practical compliant location for an open accessory structure that provides reasonable use of the rear deck.**

These conditions would exist regardless of whether the pergola had ever been constructed.

UNIQUE CONDITIONS OF THE PROPERTY

We recognize that many homes in our neighborhood are located on relatively small lots.

Our request is not based solely on lot size. Rather, it is based on the combination of physical conditions on this property.

While any one of these conditions alone might not create a hardship, together they significantly constrain the building area behind the residence. It is the interaction between the location of the home, the required rear setback, the site's topography, the retaining wall, and the neighboring driveway that creates the need for this variance.

MINIMUM RELIEF REQUESTED

The requested variance represents the minimum relief necessary.

The rear deck is proceeding through the Town's normal permitting process. The only zoning relief requested from the Board is the dimensional variance for the pergola.

Because of the existing site constraints, reducing the size of the pergola would not eliminate the need for structural support posts within the setback. Without a variance, an open accessory structure providing reasonable use of the rear deck would not be feasible.

CONSISTENCY WITH THE PURPOSE OF THE ORDINANCE

Granting the requested variance remains consistent with the purpose and intent of the zoning ordinance.

The pergola:

- is open and unenclosed;
- does not create enclosed living area;
- does not alter the residential use of the property;
- does not obstruct visibility;
- does not interfere with vehicle access;
- does not impact drainage or stormwater;
- does not reduce emergency access; and
- is adjacent to a neighboring driveway rather than a neighboring residence or primary outdoor living area.

The requested relief preserves public safety while allowing reasonable residential use of a property with unique physical constraints.

RESPONSES TO THE VARIANCE CRITERIA

1. Unnecessary Hardship

Strict application of the ordinance creates an unnecessary hardship because the existing physical characteristics of the property leave **no practical compliant location for an open accessory structure that provides reasonable use of the rear deck.** The requested variance is the minimum relief necessary to allow reasonable residential use of the property.

2. Conditions Peculiar to the Property

The hardship results from the combination of existing physical characteristics on this property, including the location of the residence, the required rear setback, the site's topography, the retaining wall, and the neighboring driveway. Together, these conditions create a constrained building envelope behind the residence.

3. Hardship Not Self-Created

These physical constraints existed before the pergola was constructed and would remain even if it were removed. The variance request seeks relief from the property's physical characteristics rather than from the applicants' actions. We are working through the Town's established permitting and variance process so the Board may determine whether the requested relief is appropriate under the ordinance.

4. Spirit and Intent of the Ordinance

Granting the requested variance is consistent with the spirit and intent of the ordinance because it preserves public safety while allowing reasonable residential use of a property with unique physical constraints.

The pergola is an open accessory structure associated with the rear deck. It does not create enclosed living space, interfere with neighboring access, adversely affect surrounding properties, or alter the residential character of the neighborhood.

The requested relief represents the minimum variance necessary to accommodate the property's existing physical characteristics.

APPLICANT'S STATEMENT

We recognize the importance of the Town's zoning regulations and understand that setback requirements exist to preserve open space, protect neighboring properties, and promote orderly development.

As we worked with Town staff, we learned that while the rear deck could proceed through the Town's normal permitting process, the pergola requires a dimensional variance because of the physical characteristics of our property. We have chosen to work through the Town's established review process so the Board can evaluate our request under the applicable variance standards.

We respectfully ask the Board to consider the unique combination of physical conditions on our property—including the location of the residence, the required rear setback, the rising topography behind the home, the retaining wall required because of that topography, and the neighboring driveway—and determine whether those conditions justify the requested relief.

We appreciate the Board's time, service, and thoughtful consideration.