TOWN OF BLACK MOUNTAIN
BOARD OF ADJUSTMENT

The Black Mountain Board of Adjustment held its regular meeting on Thursday, March 19, 2026, 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:

Vice Chair Nicole Stallings
John Hines
Linda Brinson
David Barley

Absent:

Mary Hall, Alternate
Ted Rausch, Alternate

Staff:

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

The meeting was called to order at 6:04 p.m. and duly constituted and opened for business with a quorum of regular members.

II. ADOPTION OF AGENDA

The agenda was adopted as presented by a consensus with a vote of 4-0.

III. ADOPTION OF MINUTES

David Barley made a motion to adopt the minutes of February 19, 2026, as written. The motion passed by a consensus vote of 4-0.

IV. OLD BUSINESS

None.

V. NEW BUSINESS

1. Appeal of Zoning Administrator's Decision – 1114 Montreat Road

Vice Chair Nicole Stallings opened the meeting with the first item of business being the presentations from parties wishing to seek standing. Jennifer Tipton swore in all individuals who were wishing to seek standing.

Attorney Karli Hudson presented the deed for 1114 Montreat Road showing the owners as NC Baptist Men on Mission. The deed was accepted as Evidence #1.

a. Frank Cappelli, 1120 Montreat Road, owns three properties directly next door to the subject property, with two of those being rental properties and one where he raises his family. Mr. Cappelli stated that since work began at 1114 Montreat Road, one of the rental units has been vacated, there has been disturbance to his family, he was not made aware

of the decision for the use of the subject property, and the fence and trees that were on his property were cut down. Mr. Cappelli stated that the reason he believes he has standing is because it will hurt the ability for him to rent out his properties and will be impacted because of strange, transient men who are not local to effect future rentals. Mr. Cappelli stated that one tenant had already moved out due to the activity of the workers. Mr. Cappelli stated that there were workers who were staring at his family and that they were being overseen by the Baptist Men and that it was a good assumption that this behavior would continue when volunteers begin to come in. Mr. Cappelli did not have any expert witnesses who could testify to fair market reduction but did state that he felt the use of emergency housing at 1114 Montreat Road would lower his property values. John Hines made a motion to grant Mr. Cappelli standing. The motion was seconded by David Barley and approved by a vote of 4-0.

b. Kevin Kahandjian, 17 Winter Haven Lane, owns property that runs to Montreat Road and has lived at the property for five years. Mr. Kahandjian stated that he believes that traffic will impact their lives and their property values would be lowered. Attorney Brian Gulden reminded the board that NCGS 160D-1402 states that opinion testimony is considered incompetent evidence given by a lay person. Mr. Kahandjian stated that felt he cleared the issue of standing because he lives directly across the street and that gives inference. Attorney Gulden stated that proximity alone is not sufficient to grant standing based on the statutes. Attorney Gulden requested that Mr. Kahandjian be denied standing. John Hines made a motion to deny Mr. Kahandjian standing. The motion was seconded by David Barley and approved by a vote of 4-0.

c. Will and Mary Page Troxler, 1123 Montreat Road, own Camp Merri-Mac, which has been operating for eighty-one years. The camp hosts 1,303 girls and 245 college-aged girls for 2-6 weeks. Mr. and Mrs. Troxler stated that they felt that the safety of their campers would be at risk due to the numerous amount of volunteers and questioned what type of screening procedures would be in place. Mr. and Mrs. Troxler purchased the camp in 2023 and feel that without records of screening or assurances of screening that parents might make a different decision on whether to send their children to the camp or not. Attorney Gulden objected on the basis of speculation in that the argument is generalized fear about the use and is not sufficient to grant standing. Linda Brinson made a motion to grant Mr. and Mrs. Troxler standing. The motion was seconded by John Hines and the motion did not carry forward due to a 2-2 vote with Nicole Stallings and David Barley voting against.

The three parties with standing are the Town of Black Mountain, Baptist Men on Mission, and Frank Cappelli.

Attorney Cindy Rice went through the ethical considerations with the board. David Barley stated that he works with the Department of Public Safety and Baptist Men on Mission are on their approved vendor list but he has made no endorsements, has not spoken to them, and has

financial gain. No other board members reported any ethical problems. There were no objections from the three parties for the voting panel.

Attorney Rice stated that there were two preliminary motions to dismiss the appeal. The first motion is from the Town of Black Mountain, and the second motion is from NC Baptist Men on Mission. The board took a 10-minute break to review the motions.

The motion to dismiss on behalf of the NC Baptist Men on Mission was submitted as Evidence #2.

The motion to dismiss on behalf of the Town of Black Mountain was submitted as Evidence #3.

Both pieces of evidence were accepted by Vice Chair Stallings and there were no objections from Frank Cappelli.

Attorney Gulden stated that the Town would dispense with the matter before the board based on the timelines set out in the General Statutes and the Land Use Code. NCGS 160D-405(d) gives the time in which a person can appeal an administrative decision made by a staff person. A person with standing has thirty days from direct receipt from any source, actual or constructive notice. The Town of Black Mountain Land Use Code mirrors the state statute. The administrative decision was made on May 14, 2025, and the appeal was filed on December 8, 2025. Attorney Gulden went through the appeal form and letter submitted by Mr. Cappelli and noted that Mr. Cappelli had listed everything that had been happening with the property, all of which were in 2025. Mr. Cappelli stated that he had not received actual notice until December, however, with constructive notice, neither the Land Use Code or the statutes define “from any source”. Mr. Cappelli mentioned seeing an RV but did not have a date as to when he noticed it. Affidavits provided by Paul Langston and Donald Grindstaff, of Baptist Men on Mission, stated in paragraph 12 of the affidavit that clearing of the property began in 2025. Attorney Gulden stated that at best, thirty days from that date would have been the end of October. Attorney Gulden referenced another section in Mr. Cappelli’s statement that he had observed multiple construction activities such as roofing, grading, addition being built, storage of materials, utility upgrades, and no posting of permits. Attorney Gulden called attention to paragraphs 6, 7, 8, 11, and 13 in the affidavits. The roof work began in February of 2025. The roof was completed in March of 2025. Demolition work began in May and continued into June. A small annex building was demolished in August of 2025 that was directly adjacent to Mr. Cappelli’s property. Renovations to the heating, plumbing, and electrical systems began in September 2025. Mr. Cappelli also noted that there was construction noise causing a nuisance as well as 10-15 vehicles per day entering and exiting the property. Mr. Cappelli stated that workers had trespassed in his yard. In the affidavits provided by NC Baptist Men on Mission, it was noted that in August of 2025, a conversation was had with Mr. Cappelli about the fence installation. Attorney Gulden stated that based on NCGS 160D-405, there was ample constructive notice, and the appeal would have had to have been submitted within 30 days of first noticing the activity. Attorney Gulden referred to Court of Appeals Case Town and Country v. Winston Salem in which a property owner filed an appeal 45 days after a zoning permit for a radio tower was issued. The court ruled that constructive notice began when materials

arrived on the site, including the radio tower, but a party still cannot wait more than thirty days to submit an appeal. Attorney Gulden also referred to Allen v. Burlington Board of Adjustment and Middle Sound Lookout v. New Hanover County. Attorney Gulden stated that appeal was untimely filed and noted in form to all of the activities listed in Mr. Cappelli's statement. Attorney Gulden then referred Meier v. City of Charlotte and said that the Board of Adjustment does not have subject matter jurisdiction over an untimely appeal. Attorney Gulden stated that Mr. Cappelli's statement noted that on March 16, 2025, he had observed renovations to a building that had been vacant and cannot argue that he did not know something was going on. Attorney Gulden also stated that there is an equity argument to be made as the property owner relied on the decision that was made. Any person can inquire about work going on and once work starts, the clock for the appeal timeframe also starts. Attorney Gulden asked that the board in their discretion dismiss the appeal as it was untimely filed and they do not have subject matter jurisdiction to hear the appeal.

Attorney Karli Hudson, representing the NC Baptist Men on Mission, stated that their basis for the motion to dismiss is on the same grounds as the motion to dismiss from the Town of Black Mountain. Attorney Hudson stated that the timeline is very clear and provided the board with a copy of the NCGS 160D-405 with relevant portions highlighted. The first relevant portion is the thirty day clear window and that it is not subjective to what the Appellant knew or understood, but did the person have an indication that changes were happening. At that time, the person could inquire as to what is happening with the property. Attorney Hudson referred to Town and Country v. Winston-Salem and said that it made clear that when the tower was delivered there was sufficient evidence to provide constructive notice. Attorney Hudson referred to the affidavit provided by Donald Grindstaff, property manager, and that the renovations had to take place due to the condition of the building and that they are only in the construction phase at this time and have not made use of the building yet other than for construction. Attorney Hudson referred to the dates the activities had taken place as noted in the affidavit and that there was a whole year where Mr. Cappelli acknowledged that there was activity taking place and there was ample evidence to support that. Attorney Hudson stated that there has to be a cut-off time for appeals and that it can't just be at any time otherwise it is wholly unjust to the property owner. Attorney Hudson stated that the property owners received the zoning determination in May and have been acting in good faith and that money and time have been spent and that it is wholly unjust to the property owner. Attorney Hudson asked that the board in their discretion dismiss the appeal as it was untimely filed and they do not have subject matter jurisdiction to hear the appeal. Attorney Hudson also noted that NC Baptist Men on Mission have five other rebuild sites throughout the state and the volunteers are at the property to eat and sleep, otherwise they are out in the community helping to rebuild and noted that they are still helping rebuild from Hurricane Florence in 2018.

Frank Cappelli noted that it is hard to go against staff but that the town is using the motion to dismiss as a distraction. Mr. Cappelli said that he did not receive actual notice of the zoning change until December. Mr. Cappelli said he is not challenging the construction, but challenging the use and he did not have any notice of that until December. Mr. Cappelli said that the decision was made in May but there was nothing that happened that would have shown that. Mr. Cappelli

stated that three months after construction began, the use of a boarding house was rejected. Mr. Cappelli stated that nothing in the activities going on would have indicated a zoning determination and had it been the case he would have investigated. Mr. Cappelli said that he checked the town's website in February and March, but no determination was posted. Mr. Cappelli said that he had talked with the real estate agent and that there was no mention of rezoning the property. Mr. Cappelli stated that he only became aware of the determination in December after seeing disturbing individuals and submitting a public records request. Mr. Cappelli stated that he promptly filed his appeal and that he did not have actual or constructive notice until December. Mr. Cappelli asked that the board deny the motions to dismiss and that the appeal be heard on its merits.

Attorney Gulden stated that based on the conversation noted in the affidavit that took place in early spring when NC Baptist Men on Mission met with Mr. Cappelli and explained to him what they would be doing, then the appeal is still untimely and reiterated his request that the board dismiss the appeal.

Attorney Hudson stated that the board is bound to the law and that general statutes, the Land Use Code, and case law all allow constructive notice regardless of whether someone knew or understood what was happening. When the Appellant noticed activity happening, he should have gone to investigate. At this point, the exact date does not matter because of the many months the Appellant noted activity taking place along with the conversations that took place in the spring. Attorney Hudson reiterated her request that the board dismiss the appeal.

Mr. Cappelli said that in the conversations with Mr. Grindstaff, it was not indicated that the use would be emergency zoning with one hundred volunteers. Mr. Cappelli stated that there was nothing in the construction activities taking place that would have indicated this use and that is was not his fault that they did not get zoning approval before beginning construction.

Vice Chair Stallings ruled to grant the motions to dismiss (they were combined into one motion for voting purposes) and that the appeal was untimely and that is no subject matter jurisdiction for the appeal to be heard.

Mr. Cappelli appealed to the full board.
John Hines voted to grant the motions to dismiss.
David Barley voted to grant the motion to dismiss.
Linda Brinson voted to grant the motion to dismiss.

The motion carried with a vote of 4-0 to grant the motions to dismiss the appeal based on the appeal being untimely filed and there being not subject matter jurisdiction for the board to hear the appeal.

VI. COMMUNICATION FROM BOARD OF ADJUSTMENT

None.

VII. COMMUNICATION FROM STAFF

None.

VIII. ADJOURNMENT

With no further business, the meeting was adjourned at 7:35 p.m.

Prepared by:

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Nicole Stallings, Vice Chair

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Jennifer Tipton, Senior Admin