

**TOWN OF BLACK MOUNTAIN
BOARD OF ADJUSTMENT**

The Black Mountain Board of Adjustment held its regular meeting on Thursday, March 28, 2022, 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:

John DeWitt, Chair
Lauren Dodgin
Larry Pearlman
Chloe Riddle

Absent:

Patrick Prosser, Secretary

Staff:

Jennifer Tipton, Senior Admin
Jake Hair, Planner I/Zoning Administrator

The meeting was called to order at 6:00 p.m. and duly constituted and opened for business with a quorum of four (4) regular members.

II. ADOPTION OF AGENDA

Larry Pearlman made a motion to adopt the agenda. The motion was seconded by Lauren Dodgin and approved by consensus.

III. ADOPTION OF MINUTES

Lauren Dodgin made a motion to adopt the minutes of February 17, 2022, as written. The motion was approved by consensus.

IV. OLD BUSINESS

None.

V. NEW BUSINESS

Jennifer Tipton swore in all attendees that wished to testify.

1. Variance Request – 16 Old Lafayette Lane

Jake Hair summarized the staff report and noted that the applicant is Doug and Marcia Brock and they are seeking a variance to reduce the front setback from twenty feet to ten feet. There is a Duke power line easement along the back of the property that is fifty feet in width. The property is zoned TR-4 and does meet all dimensional requirements.

Doug Brock, 296 Old Lakey Gap Road, stated the power line easement encroaches on the remaining area to build. Mr. Brock is seeking to resolve a problem with the lot and is not planning on building on the property. Mr. Brock said that the area to build is down to thirty-two feet on one side due to the power line easement. Mr. Brock did say that more people are looking to get further away from the power lines and electromagnetic currents. The power line was in place before the development was created. Mr. Brock would like to move up the building

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schedule and any buyer of the lot would seek relief and he is wanting to reduce some of that timeframe.

Larry Pearlman asked how many lots the power line easement affects and Mr. Brock said he estimates that there are at least thirty lots that are affected by the easement and that the power line runs through the middle of the development. John DeWitt said that the last time the applicant was here, the board said that they felt that they needed a house plan to see the variance request because a house could be designed to meet the requirements. Mr. Brock said he is looking for time relief for an owner in the house building process and does not have a plan. Mr. Brock said he spent four months advertising for a buyer so that he could have a plan to build but no one has been interested at this point. Lauren Dodgin asked where vehicles might go and in looking at similar properties, vehicles go in the front and if the setback is moved up in the front, where would the vehicles go. Mr. Brock said that most would put the garage under the lower elevation or putting the garage on the side of where the main living would be so as not to have a set of stairs. Mr. Brock said he cannot offer a design and is looking to solve a problem that he knows exists. Mr. Brock withdrew his request for the variance request.

2. Variance Request – 124 Settings Boulevard

Doug Brock withdrew his request for the variance request.

3. Variance Request – 602 Eighth Street

Jake Hair summarized the staff report and stated that the applicant is Diane Kyker, and she is requesting a variance to reduce the west side setback from ten feet to six and a half feet for an addition.

Diane Kyker, 602 Eighth Street, is hoping to save an oak tree and will be raising the area around the tree about five feet to help the roots. Ms. Kyker has shown the plans to all her neighbors, and they are fine with the plans. The existing space, which is two stories, would become one story and a carport would be added to the driveway. The fence and the burning bushes would remain in place. Ms. Kyker is hoping to make this her primary residence and is wanting to upgrade the residence and save the oak tree. Ms. Kyker will be moving dirt from the sloped side to help raise the area and will be looking to improve the drainage.

Jennifer Tipton summarized the evidence as follows:

- Exhibit 1: Staff Report (3 pages)
- Exhibit 2: Variance Application (2 pages front and back)
- Exhibit 3: Site Plan
- Exhibit 4: Section 4.6.4 of the Land Use Code (2 pages)
- Exhibit 5: Buffer Map
- Exhibit 6: List of Property Owners within 200'
- Exhibit 7: Notice of Variance Request
- Exhibit 8: Aerial Map

The board entered into discussion at 6:30 p.m. John DeWitt said his concern is that people are asking for variances to build bigger houses or that it looks better, then why have the requirements. Lauren Dodgin said she dislikes the “I want to build so a need a variance” mindset but is teetering on the preservation of the oak tree. Chloe Riddle said she tends to agree with Ms.

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Dodgin on the preservation of the tree and that it will help stabilize the ground. Larry Pearlman said that while he has compassion for the applicants, there are ordinances that have to be met and they have hard job to do. The board reconvened at 6:36 p.m.

Ms. Kyker said she would like to build an energy efficient addition and the tree would provide shade to the entire house. The existing house is two stories and is very inefficient and the new house would be around fifteen-hundred square feet and would fit in with the neighboring houses. The only other option would be to cut down the tree. Ms. Kyker did have an arborist assess the oak tree and he indicated that it is a very healthy tree.

Lauren Dodgin made a motion to close the evidentiary hearing. The motion was approved by consensus.

1. There are unnecessary hardships that would result from the strict application of the ordinance because there is a very healthy, large oak tree that will be preserved by the granting of the variance.
2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography in that the property has a large, healthy oak tree that would have to be removed to build.
3. The hardship does not result in actions taken by the applicant because the oak tree was on the lot before the owner purchased the lot.
4. The requested variance is not consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured and substantial justice is achieved because the addition could be built with the removal of the oak tree.

Larry Pearlman made a motion to deny the variance request. The motion was approved by a vote of 4-0.

4. Variance Request – 17 Crockett Ridge Road

Jake Hair summarized the staff report and noted that the applicant is Carla Ferriera and is being represented by Houston Hammond. Ms. Ferriera is requesting a variance to reduce the rear setback from thirty feet to twenty feet. The lot has been combined with another lot to make one larger lot.

Houston Hammond, 22 Weston Heights Drive, stated that the property backs up to common space of the Settings development that will never be developed. The two lots allowed a house to be designed and the problem is not the width but is the depth and they do not want to move the house closer to the front. The house is four thousand square feet (two thousand square feet on each level). The disturbed area has already been calculated and he and Jason Gilliland, landscape architect, have worked every design possible to make the house meet without moving the house toward the front. The twenty-foot rear setback is common to the Settings development. The Settings Design Review Board has not made a decision on this property but again, their rear setback is twenty feet.

Jennifer Tipton summarized the evidence as follows:
Exhibit 1: Staff Report (3 pages)

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- Exhibit 2: Variance Application (2 pages)
- Exhibit 3: Site Plan
- Exhibit 4: Section 4.6.14 of the Land Use Code (2 pages)
- Exhibit 5: Buffer Map
- Exhibit 6: List of Property Owners within 200'
- Exhibit 7: Notice of Variance Request
- Exhibit 8: Aerial Map

The board went entered into discussion at 6:56 p.m. Larry Pearlman had some questions about the requirements of the design review board. The board reconvened at 6:59 p.m.

Rod Allan, 136 Settings Boulevard, spoke about the overlap of the Town zoning requirements and the design review board requirements. The process is to come to the review board with a concept and if there are any differences, you can request a variance, even at the conceptual stage. The Settings HOA has prior practice of allowing twenty feet setbacks without a variance as that is the standard rear setback and is in the covenants and guidelines and has not changed, though the rear setback changed with the Town rezoning in 2010. The front setbacks are thirty feet and have always been thirty feet. Variances granted by the DRB are for issues that are true hardships but are still in keeping with the character of the neighborhood. It is requested that owners go to the DRB first and then approach the Town if a variance is needed from the Town.

Mr. Hammond said that this variance request is within the guidelines of the DRB. The Town rezoned the Settings, as well as the whole town, in 2010 and allowed vested rights with the twenty-foot rear setback until 2015, at which time the thirty-foot rear setback had to be met.

Lauren Dodgin made a motion to close the evidentiary hearing. The motion was approved by consensus.

1. There are not unnecessary hardships that would result from the strict application of the ordinance because the house could be built on the lot with the thirty-foot setback.
2. The hardship does not result from conditions that are peculiar to the property, such as location, size, or topography in that the lot is not uniquely shaped and the house can be built on the lot and meet the thirty-foot setback and the problem is general to the area and not unique to the property.
3. The hardship does not result in actions taken by the applicant because the lot was already platted prior the owner purchasing the lot.
4. The requested variance is not consistent with the spirit, purpose, and intent of the ordinance, such that public safety is achieved because the problem is not unique to the lot but rather the whole development.

Lauren Dodgin made a motion to deny the variance request. The motion was approved by a vote of 3-1 with John DeWitt voting against the motion.

5. Variance Request – 52 Old Lafayette Lane

Jake Hair summarized the staff report and noted that the property owner is Milton McClurkin, who is being represented by Houston Hammond, and they are requesting a variance to reduce the

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front setback from thirty feet to twenty feet and reduce the rear setback from thirty feet to twenty-six feet. The property line extends into the road, so the ordinance requires that the setback be measured from the curb which results in a loss of about fifteen feet in the front of the property.

Houston Hammond, 22 Weston Heights Road, said that there is a thirty-foot stream buffer in the rear and they are trying to get a variance of four feet from rear setback that backs up to the stream buffer. The house is one thousand four hundred and ninety square feet and any smaller, it would not be approved by the Settings. The house has a basement and a main floor. An additional floor would exceed the height limit. A flat roof would be below the height limit but the Settings does not allow a flat roof.

Kevin Raywood, 58 Old Lafayette Lane, received a variance several years ago and was concerned that the variance request was from the stream buffer. Mr. Hammond explained that the variance request is from the lot line and not the stream buffer. Mr. Hammond said that they have minimized the house to the nth degree to meet the Settings requirements and work within the confines of the lot size. Rod Allan did note that the DRB could allow smaller house sizes if approached with a plan.

Jennifer Tipton summarized the evidence as follows:

- Exhibit 1: Staff Report (3 pages)
- Exhibit 2: Variance Application (3 pages)
- Exhibit 3: Site Plan
- Exhibit 4: Section 4.6.1 of the Land Use Code (2 pages)
- Exhibit 5: Buffer Map
- Exhibit 6: List of Property Owners within 200'
- Exhibit 7: Notice of Variance Request
- Exhibit 8: Aerial Map

The board went into recess at 7:34 p.m. Lauren Dodgin said the hardship is compelling with the road and the stream making the lot very narrow. Chloe Riddle said that the height limit poses a hardship as well as they cannot build up. Larry Pearlman feels that the case is more compelling for a rezoning since they could meet the requirements of a TR-4 lot. Lauren Dodgin said that since the stream has to be protected and the road cannot be moved, it presents a good case for a hardship. Chloe Riddle said that she sees that have done all that they can to fit within the confines of the lot. Larry Pearlman said that the comment from Rod Allan that a smaller house might be allowed by the DRB. Mr. Pearlman also said that someone purchased the lot knowing the parameters and Jennifer Tipton explained that the act of purchasing a lot knowing that you might need a variance is not a consideration for a variance.

Lauren Dodgin made a motion to close the public hearing. The motion was approved by consensus.

1. There are unnecessary hardships that would result from the strict application of the ordinance because the lot has a road and a stream that makes the lot narrow.

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2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography in that the lot has a road and stream causing the size of the lot to be narrow.
3. The hardship does not result in actions taken by the applicant because the lot was platted prior to the owner purchasing the lot.
4. The requested variance is not consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved because the variance would allow the owner to build a house on the lot without having to move the road and maintaining the stream buffer.

Lauren Dodgin made a motion to grant the variance. The motion was approved by 4-0.

VI. COMMUNICATION FROM BOARD OF ADJUSTMENT

None.

VII. COMMUNICATION FROM STAFF

None.

VIII. ADJOURNMENT

John DeWitt made a motion to adjourn the meeting at 7:45 p.m. The motion was approved by consensus.

Prepared by:

John DeWitt, Chair

Jennifer Tipton, Senior Admin

Patrick Prosser, Secretary