

**TOWN OF BLACK MOUNTAIN  
ZONING BOARD OF ADJUSTMENT**

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The Black Mountain Zoning Board of Adjustment held its regular meeting on Thursday, June 17, 2021, at 6:00 p.m. electronically via Zoom.

**I. CALL TO ORDER**

The meeting was called to order with the following members present:

Cheryl Milton, Chair  
John DeWitt, Vice Chair  
Greg Feightner  
Janet McKimpson  
Patrick Prosser

Absent:

Jillian Ballard, Alternate

Staff:

Jennifer Tipton, Senior Admin  
Jake Hair, Planner/Zoning Administrator  
Ron Sneed, Town Attorney

The meeting was called to order at 6:06 p.m. and duly constituted and opened for business with a quorum of five (5) regular members.

**II. ADOPTION OF AGENDA**

John DeWitt made a motion to amend the agenda to move the variance request for 34 Old Lafayette Lane from item three to item one under new business. The motion was seconded by Patrick Prosser and approved by a vote of 5-0.

**III. ADOPTION OF MINUTES**

Janet McKimpson made a motion to adopt the minutes of April 15, 2021, as written. The motion was seconded by John DeWitt and approved by a vote of 4-0.

**IV. OLD BUSINESS**

None.

**V. NEW BUSINESS**

The following persons were sworn in under oath:

Nick Rubino  
Scott Russell  
Karen Ledford  
Stephen Kern  
Bill Moore  
Rod Allan  
Jake Hair

**1. Variance Request for 34 Old Lafayette Lane**

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Jake Hair explained that the variance request is to reduce the front and rear setbacks from thirty feet to fifteen feet. The property is zoned CR-1, is .298 acres, and has an average slope of seventeen percent so it does not qualify for the steep slope decrease for the front setbacks. Front and rear setbacks for the CR-1 district are thirty feet. There is also a thirty foot stream buffer in the rear of the lot. The stream buffer is both a FEMA regulation as well as a town regulation.

**Scott Russell, 40 Cotton Creek Circle**, is the realtor working with Karen Ledford. Mr. Russell pointed out that the shaded area on the attached plat is the buildable area and is approximately twelve feet deep. The property is not buildable given the required setbacks and the stream buffer requirement. A reduced rear setback would encroach into the thirty foot stream buffer.

Board members asked if the owner knew of these issues before the lot was purchased and Town Attorney Ron Sneed reminded board members that the act of purchasing a piece property knowing that a variance might be needed does not preclude them from obtaining a variance.

**Karen Ledford, 103 Windward Drive**, said that she had a survey done in March of 2019 when she was working with a contractor. The biggest issue is the depth of the lot and not the width of the lot.

Janet McKimpson said that she was not in favor of infringing on the stream buffer. Greg Feightner said that there appears to be bigger issues in the Settings than just this lot with all of the streams and setback issues and that these issues should be disclosed to the buyers. Patrick Prosser agreed with Mr. Feightner that the issues should be disclosed up front.

**Scott Russell, 40 Cotton Creek Circle**, said that Ms. Ledford was aware of the setbacks and the stream but until they are shown on paper it is hard to visualize it on the land. Mr. Russell also noted that the stream buffer setback was created after the Settings had already been platted. Jennifer Tipton did note that citizens are allowed to request a variance from the stream buffer setback per the Land Use Code.

**Karen Ledford, 103 Windward Drive**, said that she wants to be able to build on her property. There is a 1,200 square foot minimum requirement for the Settings but she would probably want to build a little larger and would probably need a depth of at least sixty feet.

**Scott Russell, 40 Cotton Creek Circle**, said that also included in the buildable area would need to be decking, parking, and a garage.

Several board members asked about having a plan or a rendering so that they could see where the house might sit and questioned if only deck posts would be encroaching into the stream buffer.

**Scott Russell, 40 Cotton Creek Circle**, said that the DRB has to approve the design and there are no plans yet as they are just trying to get a general idea of where to start and what they have to work with.

Greg Feightner said that it is hard to make a decision with no plans and asked what recourse the applicant would have other than Superior Court if the variance were denied.

Cheryl Milton asked about continuing the meeting and allowing Ms. Ledford time to get some drawing together to show the house might sit. Ms. Tipton said that the meeting would just need to be continued to a date certain.

**Karen Ledford, 103 Windward Drive**, said that she is back at square one with meeting with a builder and architect but would be interested in providing plans or a sketch to look at and not have to go to Superior Court.

**Scott Russell, 40 Cotton Creek Circle**, said that an architect is required and there are currently only five approved builders for the Settings so they may need longer than three months but did say that if during this process, the property sells, then the new owner is going to have to come to the board with the same request.

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Mr. Sneed said that the board could table the matter and then just put it back on the agenda when the applicant is ready and all staff would need to do is readvertise. Ms. Tipton confirmed that another fee would not be required.

**Bill Moore, 3000 Mason Lane**, said that he is building on the lot behind and asked about interruptions to the stream flow and hillside development and the possibility of landslides.

**Scott Russell, 40 Cotton Creek Circle**, noted that the stream is about two and a half feet wide and about ankle deep and that is not in a floodway or floodplain.

Ms. Tipton explained that the purpose of the stream buffer is to slow the velocity of the water and help filter the water before it reaches the creek or stream. There are ways to help mitigate both of those if an encroachment is allowed into the stream buffer. Ms. Tipton also explained for that for hillside development, depending on the slope, a geotechnical analysis may be required to confirm soil stability and will sometimes require extra engineering to ensure support of the structure and the soils.

Greg Feightner made a motion to table the variance request for 34 Old Lafayette Lane. The motion was seconded by Janet McKimpson and approved by a vote of 5-0.

## **2. Variance Request for 16 Old Lafayette Lane**

Jake Hair explained that the variance request is to reduce the front setback from twenty feet to ten feet. The property is zoned TR-4, is .30 acres and has an average slope of thirteen percent so it does not qualify for the steep slope reduction for the front setback. The front setback requirement for the TR-4 district is twenty feet. There is not a stream on this property.

**Scott Russell, 40 Cotton Creek Circle**, said that the issue with this lot is the Duke Energy easement that encroaches approximately fifty feet into the rear of the lot. The potential buyers of this lot had a survey done and upon seeing the encroachment, they were advised by the realtors to back out of the purchase.

Patrick Prosser asked if there was a plan for this lot showing a potential house placement.

**Scott Russell, 40 Cotton Creek Circle**, said that if this variance was going to go the same way as the previous one, he could go ahead and say that the applicant would want to table the request and come back with a building plan.

**Nick Rubino, 8385 Topsail Place**, said that is in the final stages of getting ready to construct his home at 18 Old Lafayette Lane and that he was aware of the utility easement as well as the setbacks and does not consider any of those a hardship. Mr. Rubino said that the DRB (design review board) was extremely helpful and worked with him on the front and side of the house but allowed them to stay within their parameters. Mr. Rubino said that any house that would be allowed to jut out fifteen feet in front of his home would be detrimental to his views. Mr. Rubino said that the DRB makes reasonable accommodations and to just be open and honest with them. John DeWitt made a motion to table the variance request for 16 Old Lafayette Lane and the motion was seconded by Janet McKimpson and approved by a vote of 5-0.

## **3. Variance Request for 124 Settings Boulevard**

Jake Hair explained that the variance request is to reduce the front setback from twenty-five feet to ten feet and to increase the height from thirty-five feet to forty-two feet. The property is zoned CR-1 and has an average slope of seventy percent so it does qualify for the steep slope setback reduction to twenty-five feet.

Janet McKimpson said that she spoke to Charlie Russell, Fire Inspector, and Mr. Sneed stopped her because she had investigated outside of the meeting and will not be allowed to vote as this is

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considered ex-parte communication. Ms. McKimpson recused herself from voting on this matter. John DeWitt made a motion to table the variance request for 124 Settings Boulevard. The motion was seconded by Greg Feightner and approved by a vote 4-0.

**Stephen Kern, 855 Saint Charles Avenue NE**, is currently building diagonally across from this lot and said that his views would be impacted and that he did submit his comments in writing. Chair Cheryl Milton reminded everyone that written statements are hearsay unless the author of the written comments is available to attest to the written statements and answer any questions. Chair Milton also said that views are not a granted right anywhere in North Carolina except for Beaufort County.

**Rod Allan, 136 Settings Boulevard**, said that he lives two doors down from the property where the variance is being requested and has been a long-time member of the DRB and past president of the HOA (homeowners associations) and said he appreciated the comments from others about coming to the DRB and HOA first and speaking with them and seeking guidance. Mr. Allan said that there are no houses within the Settings that have a ten foot setback as it does not fit in with the character of the neighborhood. Mr. Allan said that a sketch or conceptual plan can be brought to the DRB for review and does not need to have an architect or a builder and can then go to the board of adjustment if needed.

#### **4. Discussion of ZBA Decisions and Overriding Decisions**

Cheryl Milton said that she asked for this agenda item in regards to 103 Connally Street and the variance that was denied. Ms. Milton said that they had added another water meter and have closed off the garage doors and there is quite a bit of construction going on. Ms. Milton said she spoke with Jake Hair and that the Rachman's had been given a permit to create a game room and that any addition of water requires a separate water meter. Ms. Milton said that per the Town's ordinance, the building grandfathered but not the use so the game room is allowed. Ms. Milton said that the only entity that can change the decision of the board is Superior Court or if the ordinance in question changes. No Town staff may change any decision made by the board. Ms. Milton encouraged board members to go the Planning Board and talk to them about adding text to grandfather uses.

#### **5. Discussion of Going Back to In-Person Meetings**

Jennifer Tipton said that hybrid meetings will still be allowed so if a board or commission member or an applicant is not comfortable coming in, then staff can still also offer Zoom. Janet McKimpson asked if there would be separation between seats, and Ms. Tipton said that accommodations could be made to provide more separation between board members and the audience. John DeWitt made a motion to return to in-person meetings with the option of having hybrid meetings if necessary. The motion was seconded by Patrick Prosser and approved by a vote of 5-0.

### **VI. COMMUNICATION FROM ZBA**

John DeWitt thanked Cheryl Milton for her years of service to the Zoning Board of Adjustment, her mentoring and that he has learned so much from her and that she will be missed.

### **VII. COMMUNICATION FROM STAFF**

Jennifer Tipton explained the new policy that allows boards and commissions to review applications for new applicants and to make a recommendation. The Zoning Board of

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Adjustment has received one application from David Barley. Greg Feightner made a motion to recommend David Barley for appointment to an alternate seat on the Zoning Board of Adjustment. The motion was seconded by John DeWitt and approved by a vote of 5-0.

Jennifer Tipton thanked Cheryl Milton for her service and dedication to the Zoning Board of Adjustment and said that she will be missed.

**VIII. ADJOURNMENT**

John DeWitt made a motion to adjourn at 7:34 p.m. The motion was seconded by Cheryl Milton and approved by a vote of 5-0.

Prepared by:

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Cheryl Milton, Chair

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Jennifer Tipton, Senior Admin

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