

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

The Black Mountain Zoning Board of Adjustment held its regular meeting on Thursday, June 18, 2020, 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:

Cheryl Milton, Chair
John DeWitt, Vice Chair
Rebecca Harris, Secretary
Ted Mattson
Janet McKimpson, Alternate
Greg Feightner, Alternate

Absent:

Bob Osmundsen

Staff:

Jennifer Tipton, Zoning Administrator
William Morgan, Attorney for Board of Adjustment

The meeting was called to order at 6:00 p.m. and duly constituted and opened for business with a quorum of three (3) regular members and two (2) alternates.

II. ADOPTION OF AGENDA

Jennifer Tipton made one change to the agenda. The variance for 714 Rhododendron Avenue is being postponed while the applicant seeks legal counsel. John DeWitt made a motion to adopt the agenda as amended. The motion was seconded by Janet McKimpson and approved by a vote of 5-0.

III. ADOPTION OF MINUTES

John DeWitt made a motion to adopt the minutes of January 16, 2020 as written. The motion was seconded by Janet McKimpson and approved by a vote of 5-0.

IV. OLD BUSINESS

None.

V. NEW BUSINESS

1. Appeal of Zoning Administrator's Decision

Ms. Tipton explained that in late February or early March, Jeff Hall asked about renting out one of his bays to someone to work on heavy equipment. The property is currently zoned TR-4 and is grandfathered in for work on automobiles. The Town has an automotive sales, service and repair use and a heavy equipment service and repair use. The Town only defines automotive sales, service and repair. The Town denied Mr. Hall's request as his use is automotive sales, service and repair and not heavy equipment service and repair.

Ms. Tipton presented the following evidence:

Exhibit 1: Appeal Record

Exhibit 2: Buffer Map of Property Owners with 200'

Exhibit 3: List of Property Owners within 200'

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Exhibit 4: Notice of Appeal

Exhibit 5: Certificate of Mailing

Exhibit 6: Aerial Map

Exhibit 7: Property Posting

Jeff Hall, 410 Blue Ridge Road, said that he was wanting to rent a space to someone to work on heavy equipment. Mr. Hall said that he works on cars, trucks, and automobiles. He was given a variance at some point to add on to the garage and put in a taller bay to work on heavy equipment. Mr. Hall said the business has been operating since around 1960 when his dad was the owner and that he did not remember when he was annexed into the town. Mr. Hall said that the sometimes works on heavy machinery weekly and sometimes once or twice a month but has not ceased his operation.

Michael Raines, 554 Blue Ridge Road, said that the thought the property was annexed into the town in 1970 or 1981. Mr. Raines said that he has helped Mr. Hall with his operation for the last thirty years and at one point Mr. Hall had thirty trucks. Mr. Raines said that Mr. Hall's towing operation is the only one like it in this part of the county and they have unloaded cargo and wrecked vehicles among other things.

Don Collins, 80 Camp Branch Road, said that he owns property next to Mr. Hall. Mr. Collins said that he pursued a lawsuit against the town to not annex his property and that was in the 1980's. Mr. Collins said that he sees Mr. Hall working on heavy equipment one to two times a month. Mr. Collins said that Mr. Hall is grandfathered in and is not asking to do more than what he has been doing.

Wayne Drummond, 63 Highland Drive, said that he owns 408 Blue Ridge Road and has not had any complaints from his tenants regarding the operation at Mr. Hall's. Mr. Drummond said that the existing operation does not alter or change his property value and was in existence when he purchased the property.

John Clements, 561 Blue Ridge Road, said the he also owns an auto repair business and has no objections to Mr. Hall is already doing. Mr. Clements said that Mr. Hall has a large facility to accommodate heavy equipment service and has a fenced yard to keep the vehicles in. Mr. Clements said Mr. Hall is someone he would loan tools too.

Lisa Milton, 406 W State Street, said that she owns neighboring property and the river runs between the properties. Ms. Milton said that Mr. Hall has been a good steward of the property and that he practices all of the state laws that are required for the vehicles and that he keeps the property maintained. Ms. Milton said that she and her husband built a house for her mother-in-law in 1985 or 1986 and that Mr. Hall helped with equipment. Ms. Milton also stated that she has a 1958 flexible bus and that Mr. Hall hauled and stored the bus until gates were placed on her property. Ms. Milton said for at least the last thirty years, she has seen Mr. Hall work on heavy equipment. Ms. Milton said that Mr. Hall is conscientious of the neighborhood and the only vehicles out front are the ones that have been dropped off for services. Ms. Milton said that she felt this was discriminatory against a man who has followed all of the rules.

Larry Ogle, 407 Blue Ridge Road, said that he is in support of Mr. Hall and that Mr. Hall is a great neighbor and has worked on heavy equipment his whole life.

The board deliberated and said that there needs to be a definition of heavy use and that the existing definitions don't fit his operation. Chair Milton said that being grandfathered supersedes the definitions and he hasn't ceased operations for longer than six months. Chair Milton also said that the witnesses have testified that they have seen him work on heavy equipment and that the neighbors don't have a problem with the operation.

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Greg Feightner made a motion to overturn the decision of the Zoning Administrator to allow Mr. Hall to operate heavy equipment service and repair at 410 Blue Ridge Road. The motion was seconded by John DeWitt and approved by a vote of 5-0.

2. Variance Request for 400 S Cherokee Avenue

Ms. Tipton went over the staff report for the request to reduce the side setback of ten feet to nine and half feet to be able to subdivide the property. The property is UR-8 and requires a ten foot side setback. The houses were built in 1953, prior to any zoning regulations, and the houses were built at a slight angle causing the setback issue. All other setbacks and lot sizes are conforming to the UR-8 district requirements.

Michelle Trimble, 4 Cisco Road, read an amendment to the variance request. The amendment stated that the owner is currently in the process of rehabbing the house and that the setback from the house facing S Cherokee is fifteen feet, making the total setbacks between the houses be twenty-five feet and not twenty feet.

Ms. Tipton presented the following evidence:

Exhibit 1: Staff Report

Exhibit 2: Application for Variance

Exhibit 3: Receipt of Payment

Exhibit 4: Buffer Map

Exhibit 5: List of Property Owners

Exhibit 6: Notice of Variance Request

Exhibit 7: Certificate of Mailing

Exhibit 8: 2019 Aerial Map

Exhibit 9: Picture of Property Posting

The board made the following findings of fact:

1. There are unnecessary hardships would result from the strict application of the Ordinance in that the houses were constructed in 1953 prior to enactment of the Land Use Code and the setback and subdivision requirements did not exist.
2. The hardship results from conditions that are peculiar to the property because the homes were constructed in 1953 prior to the enactment of the Land Use Code, setback requirements and subdivision regulations.
3. The hardship did not result from actions taken by the applicant because the houses were constructed in 1953 prior to the Land Use Code and setback and subdivision requirements were established.
4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved because both of the houses have existed since 953 in the current locations and configurations; however, the variance allows the property to be subdivided such that they can each be owned separately. The resulting lots (6,239 and 9,430 square feet respectively) exceed the 5,000 square foot minimum lot size requirement in the UR-8 zoning district, have access to streets, and will be accessible by fire and emergency vehicles.

John DeWitt made a motion to grant the variance to allow a reduction of the side setback from ten feet to nine and a half feet.

VI. COMMUNICATION FROM ZBA

None.

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VII. COMMUNICATION FROM STAFF

None.

VIII. ADJOURNMENT

John DeWitt made a motion to adjourn at 6:48 p.m. The motion was seconded by Greg Feightner and approved by a vote of 5-0.

Prepared by:

Cheryl Milton
Cheryl Milton, Chair

Jennifer Tipton
Jennifer Tipton, Zoning Administrator