

MINUTES OF THE BOARD OF ADJUSTMENT MEETING
HELD MONDAY, AUGUST 15, 2016

The Board of Adjustment met at 4:02 p.m. on Monday, August 15, 2016.

Members present: Kieffer, Groce, Pearlman, Chandler, and Landau. Mr. Jonathan Kanipe, Zoning Administrator, was present. Mr. William Clarke, Town Attorney, was also in attendance. Chairman Goosmann was not present. Mrs. Lynn Kieffer filled in as Chairman for Mr. Goosmann who was absent.

Mrs. Lynn Kieffer called the meeting to order at 4:00 p.m.

Chairman Goosmann swore in the following:

Mr. Houston Hammond
Mr. Greg Cloos
Ms. Elizabeth Newman
Mr. Robert Deutsch
Mr. Jim Selmensberger
Mrs. Susan Selmensberger

The meeting minutes from July 11, 2016 were presented. Mrs. Rhoda Groce made a motion to approve the minutes from July 11, 2016. Mr. Lowell Pearlman seconded the motion and the minutes were unanimously approved.

HEARING (Evidentiary):

Mr. Steele and Mrs. Debby Alphin, 35 Hilltop Road, were represented by Houston Hammond, designer, and Greg Cloos, landscape architect. Mr. and Mrs. Alphin are requesting a variance to construct a portion of a new driveway in the side yard setback in conjunction with new home construction. Dr. Richard Landau shepherded the discussion. Mr. Hammond reviewed the request for a variance which was to locate a portion of the motor court in the side yard setback, specifically four feet and eight inches from the property line. Mr. Hammond specified that the narrowness of the lot led to the preference for the side loaded garage.

Ms. Newman, representing Deutsch and Gottschalk law firm on behalf of Mr. Al and Mrs. Kathye Nippert, does not feel the Board has the ability to grant the variance under the North Carolina General Statutes. Ms. Newman indicated that she does not believe the driveway cannot be constructed, in the strictest sense of the word, and that it can be built in another location. Mr. Hammond said it would require them building a significant retaining wall on that side to construct the garage. Ms. Newman agreed but said this would be a pecuniary hardship, and not reason for the Board to grant a variance.

Ms. Newman indicated her clients would be agreeable to working with the Alphins and hoped that they would be able to work this out prior to the meeting. Mr. Hammond agreed and said that their reason for keeping the application on the agenda was to find out whether the Board was willing to consider the variance.

Mr. Deutsch, also representing the Nipperts, indicated that their design professional, Mr. Robert Griffin, had attempted to contact the designer but thus far had been unsuccessful. Mr. Hammond said that there were 28 homes between Stuyvesant and Hilltop and the average was 89 feet and their lot was 120 feet.

DELIBERATION & DETERMINATION

Dr. Landau asked whether they would be willing to table the item and speak with the Nippert's representative. Mr. Hammond said yes, they were agreeable to doing this. Mrs. Kieffer reviewed the next Board meeting date of September 19th. Mr. Hammond asked whether the application date would be on Monday, September 5th but Mr. Kanipe indicated it would be Tuesday, September 6th. Mr. Hammond asked to formally table the matter until the next month.

HEARING (Evidentiary):

Mr. James and Mrs. Susan Selmensberger, 422 Vanderbilt Road, request a Conditional Use Permit and variance to install an irrigation well head within the rear property setback, and additionally, request a Conditional Use Permit and variance to allow installation of a children's play structure. Mr. Robert Chandler shepherded the discussion. Mr. Selmensberger reviewed the

rationale behind what was considered the front yard and side yard and noted that each side (one facing Southwood Road and one facing Vanderbilt Road) were nearly the same length, however, the Vanderbilt Road side was slightly larger. Mr. Selmensberger did note, however, that a previous Board had considered the front of the home as Southwood Road. Mr. Clarke reminded the Board that a recent amendment to the zoning ordinance allowed the Board of Adjustments the ability to consider visibility for side yards on corner lots.

After some discussion, Mr. Selmensberger indicated that the well was five (5) feet inside the setback and twenty (20) feet around the property line. Mr. Selmensberger indicated he would screen this well head heavily, and it would be smaller than the neighboring property owner's well head cover.

Mr. Chandler asked what the hardship was to request the well head. Mr. Selmensberger indicated his belief that chlorinated water would harm the landscaping and was not sufficient with the landscaping already in place. Mr. Selmensberger further indicated that, specifically, the precise location of the well head was dictated by Buncombe County and state health standards in regards to the proximity of wells to structures.

Discussion then turned to the placement of the swing set and whether it would fit anywhere else on the property.

A final decision was made by the Selmensbergers to move the play set into the side yard, in compliance with setbacks, and to completely buffer the structure.

DELIBERATION & DETERMINATION

James and Susan Selmensberger of 422 Vanderbilt Road are requesting a Conditional Use Permit and Variance to including the allowance for a well head within the rear yard setback and a conditional use permit for placement of a children's playset. The well head would be within 5 feet of the setback and will be completely buffered. Mr. Chandler further stated that the applicants had removed the request for a variance to construct a play set within the front yard, and have replaced

that with a Conditional Use request to allow the play set structure within the side yard in compliance with the setbacks.

Mr. Pearlman made a motion to approve a Conditional Use Permit and Variance be granted to James and Susan Selmensberger of 422 Vanderbilt Road for the well head and to approve a play set as a conditional use, and moved that the facts as recited by Robert Chandler and his summation be accepted as findings and facts to support this grant. The Board has inspected this site and noted that a neighboring property owner had expressed concern to the Town Administrator over the well head and play set via email, but was not at the meeting to express an opinion.

Mr. Pearlman moved that granting this Conditional Use Permit (a) would not materially endanger the public health or safety if located where proposed and developed according to the plans as submitted and improved, (b) met all required conditions and specifications of the Town of Biltmore Forest Zoning Ordinance, (c) would not substantially injure the value of adjoining or abutting property, and (d) would be in general conformity with the plan of development of the Town of Biltmore Forest and its environs as set forth in Sections 1005.03 (2) and (3) of the above ordinance. The applicant has been informed that he is to report to the Zoning Administrator within seven (7) days of completion of the project in order that the Zoning Administrator can determine that the project has been completed in accordance with plans submitted to the Town.

Further, Mr. Pearlman moved that granting the Variance based upon the foregoing findings of fact, satisfied the applicable Sections of 1005.04 and paragraphs one through four, and would not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Ordinance would, in this case, result in a practical difficulty or unnecessary hardship. He further moved the Board to find that the spirit of the ordinance would be observed, public safety and welfare secured and substantial justice done. The applicant has been informed that he/she is to report to the Zoning Administrator within seven (7) days of completion of the project in order that the Zoning Administrator can determine that the project has been completed in accordance with plans submitted to the Town.

Dr. Landau had one comment and noted to that the hardship for the well head was that the State of North Carolina required that the well be located a specific distance away from the home or a structure.

The motion was seconded by Mr. Pearlman and the motion passed unanimously.

There were no further items to discuss.

The meeting was adjourned at 4:44 p.m.

The next meeting of the Board of Adjustment was scheduled for Monday, September 19th 2016 at 4:00 p.m.

ATTEST:

Greg Goosmann
Chairman

Jonathan B. Kanipe
Town Administrator