



To: Members of the Board of Adjustment, Applicants & Neighboring Property Owners
From: Jonathan B. Kanipe, Zoning Administrator
Date: November 2, 2016
Re: Board of Adjustment Meeting at 4 p.m.

Applicants:

You or your representative **must** be present at this meeting or your application will not be reviewed.

Members of the Board of Adjustment & the Zoning Administrator may visit the property prior to the meeting.

You or your representative **must** also attend the Design Review Board meeting on the **Thursday, November 17 at 5:30pm** to complete the approval process.

Certificates of Zoning Compliance will be issued after review and approval from the Board of Adjustment & Design Review Board.

Neighbors:

You are receiving this notice because your property is adjacent to an applicant on this month's agenda.

You may review applications & plans for the projects on this agenda at Town Hall M-F 9am-5pm.

You are invited to attend the scheduled meeting and make comment.

The following items of business are scheduled to be addressed by the Biltmore Forest Board of Adjustment on Monday, November 14, 2016 at 4:00pm in the Town Hall Board Room.

1. The meeting will be called to order and roll call will be taken.
2. The minutes of the October 17, 2016 meeting will be presented for approval.
3. Hearing of Cases (Evidentiary Hearings, Deliberations & Determinations):
 - Case 1:** Mr. John and Mrs. Brandy Shenk, 18 Cedar Hill Drive, request a conditional use permit to construct a six (6) foot black aluminum fence in the rear yard.
 - Case 2:** Ms. Heather Koch, 6 Westwood Road, requests a conditional use permit and variance to construct three (3) garden retaining walls.
4. Adjourn.

MINUTES OF THE BOARD OF ADJUSTMENT MEETING
HELD MONDAY, OCTOBER 17, 2016

The Board of Adjustment met at 4:00 p.m. on Monday, October 17, 2016.

Members present: Goosmann, Kieffer, Groce, Pearlman, Chandler, and Landau. Mr. Jonathan Kanipe, Zoning Administrator, and Mr. William Clarke, Town Attorney, were present.

Chairman Goosmann called the meeting to order at 4:00 p.m.

Chairman Goosmann swore in the following:

Mr. Jim Selmensberger
Mr. Maury Hurt
Mr. Scott Cook
Mr. James Voso
Mr. John Kincheloe
Mr. Ron Fagan
Ms. Tammy Wood
Ms. Tiffany Hernandez
Ms. Amy Fleming
Mr. Houston Hammond
Mr. Steven Lee Johnson
Mr. Tom Jones
Mr. Sayers Harman
Dr. Jeff Heck
Dr. Charles Vasey

The meeting minutes from September 12, 2016 were presented. Mrs. Kieffer made a motion to approve and Mrs. Groce seconded. The minutes were approved.

HEARING (Evidentiary):

Dr. Landau reviewed the proposal for tree removal from Sayers and Amy Harman at 333 Vanderbilt Road. The site consisted of twenty one (21) white pine trees for removal, sixteen (16) of which were protected. Mr. Harman reviewed the plan for the project and plans for replanting with hardwood and fruit trees in the back yard. Mr. Harman noted that they had done some plantings earlier but a large branch fell and they decided it would be prudent to remove the other

trees prior to replanting. Dr. Landau verified that the Board reviewed the site, and noted that the proposed layout was included for the replanting of the trees. Dr. Landau further noted that no neighbors had objected or requested information about the proposal.

Dr. Landau did not have any additional facts for the proposal. Mr. Goosmann asked Mr. Harman whether he had addressed the trees with any neighbors, and Mr. Harman said he had spoken with Mr. and Mrs. Whiteley and they were in agreement. Mr. Harman had not spoken to the neighbors at 335 Vanderbilt Road. Mr. Goosmann asked Mr. Harman whether the previously approved play structure was a concern for Mr. Harman. Mr. Harman said yes there was a play structure twenty yards into the rear yard behind the rhododendrons that posed a safety concern due to falling branches or if the trees fell.

Mr. Goosmann had no further questions. There were no additional questions from those in the room or from the Board. Dr. Landau summarized the facts of the case. A motion was made by Mr. Pearlman. Mr. Chandler seconded the motion, and the motion was approved unanimously.

HEARING (Evidentiary):

Mr. Houston Hammond, designer for Norwood and Sidney Thornton at 6 Southwood Road, presented plans for the detached garage. The proposed garage is 26'x18' and is under 25 feet in height. Mr. Hammond indicated that the garage placement was altered to allow for a better placement to work on the grade. The garage is turned a little bit relative to where the stakes are presently. Mrs. Groce asked if it would tie into the rock wall, and Mr. Hammond verified this. Mr. Chandler asked whether the mature rhododendron would be removed and Mr. Hammond said yes. There is a 9 inch poplar, 10 inch holly, and 7 inch mulberry that will be removed. Mr. Hammond noted the plans for a chat gravel driveway.

Mr. Chandler asked Mr. Hammond to speak about the screening for the garage. Mr. Hammond noted that the existing vegetation was dense already, but Mrs. Groce said that the viewpoint from the neighbors on Hilltop Road would be fairly open. Mrs. Groce asked whether the client would be willing to screen if necessary, and Mr. Hammond said they would be willing to do this.

DELIBERATION AND DETERMINATION

Mr. Pearlman asked the rest of the Board whether they were putting themselves in a position of approving something when they did not have the overall scheme of the main residence. Mr. Hammond verified that the main residence would be of a similar design and style as to the garage. Mr. Hammond also said that the main body of the new house was as laid out on the plat provided to the Board. Mrs. Kieffer asked for the rationale behind asking for the garage to be constructed first, and Mr. Hammond said that Mr. Thornton would like to have a wood shop or perhaps use this as a location to store a boat. Mrs. Kieffer then verified with Mr. Hammond that the design of the home, cedar shake and board and batten, would be the same as the garage and Mr. Hammond said yes. Mrs. Kieffer also asked when the main residence would be constructed, and Mr. Hammond said that he hoped the main residence would be started in the spring.

Mr. Clarke verified that the Board could approve a conditional use permit for a detached garage and that the applicants were allowed one detached structure. Dr. Landau noted that the previous application by the Thorntons included a second detached garage but that had since been changed to an attached garage.

Mrs. Kieffer asked about the square footage of the garage and Mr. Hammond verified that it was 26 feet by 18 feet, which is under the Town's requirement of 750 square feet for a detached structure.

There was no further discussion or questions from the Board.

Mr. Chandler recited the facts of the case as presented, including the height of the structure which was 23 feet, 6 inches and that the building was 26 feet by 18 feet. Mr. Chandler recited that the applicants would be willing to do more screening if requested by the neighbors. Mr. Goosmann also reminded the Board that there were three trees to be removed as part of the project.

Dr. Landau made motion to approve 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. The motion was seconded by Mrs. Groce. The motion was unanimously approved.

HEARING (Evidentiary):

Mr. Steven Lee Johnson, representing Rich Wyde and Angela Branch, the prospective owners at 6 Deerfield Road, was called forward to discuss a fence project in their rear yard and side yard. The request was to allow a variance of the rear and side yard setback.

Mr. Johnson noted that the best placement for the fence was within the setback in two areas. The fence is within compliance on the western setback, and to not disturb the extensive evergreen screening. Mr. Johnson noted that the applicants wanted to provide for protection of their elderly dogs as they were concerned about wildlife coming into their yard and harming them, particularly bears.

Mr. Johnson noted that the alignment of the fence was based on two things. The first is an existing, open corridor underneath the power lines. The second was that two neighboring property owners had created significant evergreen screening and they did not want to disturb this screening. Mr. Johnson noted the dimensions of the fence were related to this opening and the existing evergreen screening.

Mr. Johnson also noted that fencing on the side of the property was due to mature trees and the protection of their root zone. Mr. Johnson said he was able to speak for his client and convey that they were willing to provide more screening and buffering, via additional plantings, as needed to keep the neighbors from being able to see the fence.

DELIBERATION AND DETERMINATION

Mr. Chandler asked whether they had considered an invisible fence. Mr. Johnson said they had considered this, but were much more concerned about the safety of their animals from wildlife coming into the property. Mrs. Kieffer said that many people did have invisible fences that worked well to keep animals in the property.

Mrs. Groce asked whether the fence would be immediately underneath the power line. Mr. Johnson said it would be offset and not immediately underneath the power line. Mr. Pearlman asked whether Duke Energy would be able to remove any structure that was listed in the power line easement area. Mr. Clarke said that he was not entirely clear on the extent of the ordinance but that it would not be a good practice to construct a structure under the power line. Mr. Johnson said the most recent survey they had indicated that there was not an easement from Duke Energy in place.

Mr. Clarke reminded those present that the Board of Commissioners had recently enacted an ordinance which stipulated that animals or children could not be used as the basis for having a fence. Mr. Chandler asked whether they could bring the fence in on the rear property line in front of the existing plantings. Mr. Chandler asked whether they could construct the fence within the setback. Mr. Clarke indicated that if the fence was located within the setback the Board might be able to consider a variance for the side setback in relation to the mature tree roots along the eastern property line. Mr. Johnson said he thought the applicants might be willing to do this, but did want to preserve the existing large trees – magnolia, maple, and cherry – along the eastern property line. Dr. Landau asked whether there was any hurry to receive this proposal as he would prefer to see a revised plan before making a decision. Mrs. Kieffer then asked how large the dog was, and Mr. Johnson said the dog was small and elderly. Mr. Pearlman reminded Mr. Johnson that if the Board turned the request down, it would be one year before the application could be renewed.

Mr. Johnson asked the Board to consider pulling the fence within the grassed area (in compliance with the setbacks) and only the slight encroachment of six (6) feet into the eastern side yard setback. The side yard setback would be to request a variance as a result of the large, mature oak trees in the side yard. Dr. Landau said he could understand this and Mr. Pearlman followed with a question as to whether there was any reason to have the setback other than the

elderly dog. Mr. Clarke indicated that the protection of the mature trees on the eastern side of the property was a rationale for the variance of the side yard setback. Mr. Johnson agreed and noted that the new owners wanted to be as respectful to their new neighbors as possible.

Mr. Goosmann noted that he would not be voting on the matter as he has a conflict, but that he would shepherd the discussion from here forward. Mr. Goosmann asked whether there were any additional questions from the Board. Mrs. Groce asked whether this resolved Mr. Riester's concerns on the western side of the property. Mr. Johnson believed that his concerns were addressed by the proposal.

Ms. Tiffany Hernandez, 5 Amherst Road, came forward to speak regarding the proposed fence. The proposal by Mr. Johnson was presented to her was to locate the fence closer to the applicant's home and that she would not be able to see the fence from her property. Mrs. Hernandez reviewed the new proposal with Mr. Johnson and was comfortable with the proposed revision. Mrs. Hernandez was asked to contact the Town Administrator, Jonathan Kanipe, if she believed the plantings and screening for the fence were not adequate to those conditions required by the Board of Adjustments.

Mr. Pearlman recited the facts of the case, including the amended plans as presented by Mr. Johnson. Mr. Goosmann reminded the Board that the neighbors present and those that reviewed the plan prior were in agreement with the proposed plan. Discussion ensued briefly on the concerns raised by Mr. Riester, and the Board believed that the revised plan and plan in general would address Mr. Riester's concerns.

Mrs. Kieffer made a motion 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, Mrs. Kieffer 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.

Mrs. Groce seconded the motion. All voted in agreement and the motion passed unanimously.

HEARING (EVIDENTIARY)

Mr. Jim Selmensberger and Mr. Maury Hurt, architect, presented the proposal for Ms. Hulsing to construct a detached garage. Mr. Hurt reviewed the history of the home and noted that the house was constructed in 1937 and did not have a garage. The location of the proposed garage, which was behind existing large rhododendron screening. Mr. Hurt explained that the topography of the lot did not allow for a garage to be located in the rear yard.

DELIBERATION AND DETERMINATION

Mrs. Kieffer noted that there was a large drainage swell in the rear yard that precluded the placement of the garage in the rear yard. Mr. Hurt indicated that the proposed garage was approximately 175 feet from the road, and the front yard setback was 60 feet from the road. The garage was in compliance with all setbacks.

Mrs. Kieffer recited the facts of the case, and noted that the building was under the maximum allowable square footage and noted that neighbors from across the street visited to review the plans and were in support. Mr. Chandler asked Mr. Clarke whether the Board would have to approve this if it was attached via an enclosed walkway, and Mr. Clarke said it would because it would be located in the front yard regardless.

Mr. Clarke asked the applicants to verify the distance for the record of the garage from the home. Mr. Hurt said that the garage was approximately 160 feet from the road. Mr. Clarke then asked whether if, upon construction, the garage is visible if the landowner would be willing to provide existing screening. Mr. Selmensberger verified that Ms. Hulsing would screen as necessary.

Mrs. Kieffer recited the facts of the case, including that the proposed garage was 160 feet from the road and that the detached garage was in compliance with all setbacks and that the square footage and roof coverage were less than the maximum allowed. Mr. Hurt pointed out for the record that the garage was oriented so that the doors did not open toward the road. Mrs. Kieffer also noted that the applicants agreed to screen if necessary, and that adjoining property owners had reviewed the proposal and were in agreement.

Mrs. Groce made a motion 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.

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project in order that the Zoning Administrator can determine that the project has been completed in accordance with plans submitted to the Town.

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

Hearing (Evidentiary)

Various representatives of MAHEC came forward to present the plan.

Mrs. Groce shepherded the discussion and noted that there was no additional information to be presented other than the traffic study. Dr. Heck said there was nothing additional and they would just move forward with the traffic study.

Mr. Tom Jones, WGLA Engineers, began the presentation. He noted that the State Fire Code, which was provided to the Board, required a secondary access road to a facility that was greater than 124,000 square feet. Mr. Chandler verified that this was due to the new building construction and not the existing buildings, and Mr. Kincheloe said yes. Mr. Clarke asked whether this was an emergency access only requirement, and Mr. Jones said that it was simply that there had to be a secondary access.

Mr. Jones indicated that topography was the largest determining factor in not considering the northbound option to the Double Tree. The south options included Interstate 40 and controlled access to the westbound entrance ramp, and that NC D.O.T. would not allow access off this controlled access. Mr. Chandler asked whether the option to the Double Tree was not considered because of cost or whether it was due to topography and clearing. Mr. Jones said that cost was not considered but that the fourth option that connected to the Double Tree hotel was would require more clearing and the topography was not good.

Mr. Jones indicated that MAHEC did not feel that access via the Double Tree was appropriate because it was not a distinct entrance. Mr. Jones also believed that cutting a road to the Double Tree would result in more clearing and that Mr. Steven Lee Johnson could address this more. Mr. Jones summed up his argument that a curved entrance road to the west onto Vanderbilt Road would result in the least clearing and the least visual disruption to Vanderbilt Road. Mr. Jones noted that tiered retaining walls would be used to construct the road.

Mr. Goosmann asked about a potential driveway access down to the Double Tree and why it was not an available option. Mr. Jones said that a stair step option would not work because the topography was too great.

Mr. Pearlman asked about the driveway to the Double Tree as well and asked whether Biltmore Farms had objected to this driveway or if they raised any concerns. Mr. Jones said he was not clear that they would not accept it, and that they had seen the drawings and did not object to any of them, but he would not speak for them and say they would or would not accept it. Mr. Pearlman followed up by stating that the question then was whether the Town was being asked to accommodate MAHEC and Biltmore Farms only because this was only a preferred option. Mrs. Groce asked further whether Option D (the access via the Double Tree property) would limit fire truck ingress and egress and requested clarification on whether this was just not desirable or that it was not possible.

Mr. Steven Lee Johnson indicated that the driveway connecting into the Double Tree access would decimate that forest and that significantly large and mature trees would have to be removed to accommodate this road. Mr. Johnson further stated that this was a linear road that would be much more disruptive. Mrs. Groce said it would then be the responsibility of MAHEC to screen this area. Mr. Johnson said it would be a permanent scar and there is nothing that would be done to appropriately screen or landscape this area.

Mr. Pearlman began to discuss the traffic study. Mr. Pearlman asked whether MAHEC was asking for this road for their benefit or whether they would be acceptable to receiving just the emergency access. Mr. Jones asked to defer to the traffic study.

Mr. James Voso, representing Mattern and Craig, came forward to discuss the traffic study prepared for MAHEC in relation to this project. Mr. Voso began his discussion of the traffic study characteristics and noted that an "F" grade was the lowest that could be given to an intersection. Mr. Voso noted that the standards for these intersection was based on the amount of delay experienced by a driver before being released to travel through the intersection. Mr. Voso's firm worked with NC D.O.T. to gather data related to the intersection, and further noted that it was unlikely that any changes to the light would occur.

Mr. Voso then went through how his firm determined the operability and service levels of the intersection based on his modeling program. Mr. Pearlman verified that at 8:00 a.m. the light at Vanderbilt Road was operating at a grade "E". The relative average at this approach was 1 minute. The grade and time delays increased during the remainder of the work day. Per N.C. DOT's regulations, if the project they are working on results in a dropped letter grade then there should be mitigation from the developer to improve the intersection. Mitigation was also required if the letter grade did not change but the traffic was worsened by 25 percent. Discussion ensued regarding the specifics of the traffic modeling and the cars that could be added to the intersection. The takeaway is that if the driveway was allowed for unrestricted use the traffic would be appreciably changed between 4 and 6pm. Mattern and Craig's recommendation was to disallow general use during the house of 4 and 6 pm but that it could be utilized for general, unregulated use otherwise.

DELIBERATION AND DETERMINATION

Dr. Landau then clarified that the traffic study reported that levels of frustration would still exist even if the cars were not added to the scenario. The traffic would remain poor and not improve. Mr. Voso agreed with this but said that would be applicable even if one person built a home and added a car to the road. Discussion ensued regarding whether the impact of increased traffic could be used to prohibit development. Mr. Voso believed that the existing problem should not be used to prohibit increased development and referred to development all along Hendersonville Road and the impact that had on the road.

Dr. Landau reiterated the support the Board had for MAHEC but did not want to create a situation that would create frustration or lessen the desirability of living in Biltmore Forest. Mr. Voso asked whether the same concern would apply to traffic issues related to the intersection at Highway 25 and the Double Tree. Mr. Goosmann believed that diverting cars from this intersection and putting traffic onto Vanderbilt Road would result in the problem increasing in both places.

Mr. Pearlman then asked whether the point being argued was to improve conditions for MAHEC employees while asking the Town to denigrate their services. Mr. Pearlman believed that if they needed the road to construct the building, then the more preferable solution would be to construct a road dedicated solely to emergency access and be done with it.

Dr. Heck said that he understood but also hoped the Board understood they did not want to harm their neighbors in the Town. Dr. Heck felt disappointed that allowing open traffic to leave between 4pm and 6pm would have a negative impact on the community. However, he did believe that the additional traffic at other hours would only add seconds to the intersection. As a result, he did not believe that MAHEC was asking for anything outrageous to the County.

Ms. Tammy Wood, from MAHEC, indicated that if the road was built solely for emergency purposes it would be an exorbitant cost of approximately one million dollars, but that would also push traffic more so into using the already dangerous traffic lanes behind the Double Tree hotel and out of the present access onto Vanderbilt Road.

Dr. Heck reiterated that MAHEC had already removed sixty (60) employees from the campus to alleviate traffic concerns and mentioned that the City of Asheville was going to extend bus service to this area. There is potential to incentivize bus usage from employees. Dr. Heck did not want to do something that would harm the Town, but offered construction of the drive subject to emergency traffic only from 4pm to 6pm.

Mr. Voso spoke about the cars that are exiting the existing driveway at the Double Tree. He noted that a conservative basis of twenty five (25) percent were factored in that would no longer utilize the existing driveway but would utilize the new driveway. Mr. Chandler asked whether there was a way to factor the idea that cars were already using that access into the study. Mr. Voso said they were factored in but they were not isolated out; the engineers simply built 25 percent reduction into the study.

Mrs. Groce asked Mr. Voso for his opinion about the proposed mirroring of the intersections on Hendersonville Road. Mr. Voso said it will help, and informed the Board that currently they operate as split side street intersections. He indicated the improvements would be a more efficient operation. Mr. Voso said it would be better but he could not say how much better. Mr. Chandler asked when this would be completed, and Mr. Voso said he was unsure of a definitive timeline but it would likely be done by the end of the year. Mr. Chandler followed up and asked whether there would be a way to model the intersection now and then when that intersection was improved, and Mr. Voso said yes.

Mr. Pearlman asked Mr. Voso for his professional perspective as to the growth of traffic on Hendersonville Road. Mr. Voso said it was approximately three (3) percent growth per year.

Dr. Landau asked Mr. Kanipe if the parking lot behind the Double Tree was in the town limits, and Mr. Kanipe verified this. Dr. Landau expressed his concern that MAHEC relay concerns about safety issues in this parking lot due to the possibility of traffic and accidents. Dr. Landau further stated that he did not like the proposed location because it was a difficult area and speeds increased as cars travelled north on Vanderbilt Road.

Ms. Cook responded to Dr. Landau's initial concern by stating that MAHEC had discouraged use of the Double Tree parking lot among its employees. Mr. Jones said the goal of creating the new driveway onto Vanderbilt Road was to alleviate these concerns. Mr. Voso followed up on Dr. Landau's point and said that his hope was that cars would not travel through the Double Tree parking lot now and utilize the proposed road. Mr. Voso indicated this was another reason that the connection parallel to Vanderbilt Road was not preferred.

Dr. Charlie Vasey, 334 Vanderbilt Road, spoke as a neighbor and citizen of the Town. He is opposed to the project due to the possible increase of traffic and believed that there were significant traffic concerns already. He also said that as the Chairman of the Board of the Vanderbilt Park development they did not request an entrance onto Vanderbilt Road. Further, he believed there was a request for this before the Board two or three times prior, and referenced an earlier request from Jack Cecil for a condominium complex. Dr. Vasey expressed his concerns that, even though his access would be better to Vanderbilt Park, he did not believe this was a good option because of the increase in traffic.

Dr. Landau asked whether there was a requirement for Vanderbilt Park to have a secondary entrance, and Dr. Vasey reviewed some of the challenges experienced by those who work and travel to Vanderbilt Park, including the usage of a nearby church parking lot as an access.

Mr. Chandler asked Mr. Voso for his thoughts on other signalized intersections along Hendersonville Road. Mr. Voso said that almost all were operating at a grade "E" or "F" during peak hours. Mr. Voso said that the intersection at Vanderbilt and Hendersonville Road presented

significant challenges due to its current geometry and its five point intersection. He believed it probably operated more poorly than other intersections due to its geometric nature.

Mr. Pearlman asked whether the Board could have some time to consider this information and the traffic study as he did not want to be rushed into the decision. Mr. Goosmann said he believed the Board would have thirty (30) days to consider the decision, and verified this with Mr. Kanipe.

Mr. Clarke asked for verification that the light at the intersection for Vanderbilt Road and Hendersonville Road would not be changed. Mr. Voso said that the N.C. DOT indicated their belief that it was operating as well as it possibly would. Mr. Voso then reviewed how the software permutations worked and noted that if he improved the signalization for Vanderbilt Road that the wait times would go down, but as this was up to N.C. DOT it was not considered during the traffic study.

Mrs. Groce asked for the timeline on the improvements to the right turn only from MAHEC. Mr. Fagan said this was likely to occur in the summer of 2017.

Mr. Goosmann asked for additional questions. Mr. Chandler said that he still wanted some consideration to the extent of the scarring that would occur if the roadway connected into the existing Double Tree parking lot. Mr. Goosmann piggy backed on this and asked about some specific parking areas at the hotel, and Mr. Kincheloe said he believed this was bus parking. Dr. Heck reiterated again that there would be removal of significant hardwood trees.

Mr. Pearlman asked what the impact would be to MAHEC if this building were not constructed. Dr. Heck said it would be a significant setback, and went through the detrimental results that a denial would have for the entire MAHEC campus. Dr. Heck reviewed the funding allocated by the State of North Carolina for the project and reviewed the other benefits that accrued to the region by the campus and improvements being located there.. Mrs. Groce asked whether there was a Plan B for the building. Dr. Heck said they really did not; the building could not be located anywhere else and to have the synergy of the clinics on the campus. Ms. Wood said that the campus, in general, was ideally located due to the proximity of the hospital and benefit that afforded those who worked at MAHEC.

Mr. Jones asked for the Board to consider some emergency access approval from this meeting, as that would allow the buildings to move forward. Mr. Pearlman asked whether that solution would be agreeable to MAHEC. Mr. Clarke asked whether MAHEC needed to have a decision immediately, and noted that the Board was statutorily allowed to deliberate for up to thirty (30) days. Mr. Pearlman further said he felt that MAHEC officials did not want to consider the driveway as an emergency access only. Dr. Heck said that if it was the only way the road would be constructed that would be acceptable, but certainly, this was not their preference.

Mr. Goosmann asked Mr. Kanipe about the back entrance to Carolina Day School. Mr. Kanipe reviewed the history of this road and noted that the only complaints that ever arose were from some neighbors during the time periods the gate was allowed to be open and utilized.

Mr. Goosmann asked Mr. Clarke about a question posed by Mr. Pearlman earlier regarding whether or not the Board could impose additional conditions at a later time. Mr. Clarke indicated that he did not believe this was the case once the conditional use permit had already been granted.

Dr. Landau asked whether MAHEC had ever considered ways to reorganize the existing entities on the campus, considered a different site, or moving more employees off campus. Dr. Vasey spoke up in regards to the new proposed space and received clarification from Mr. Kincheloe as to how much additional space would be added. Dr. Vasey further addressed a question as to additional construction traffic and the route it would take to arrive on the site.

Mr. Goosmann asked Mr. Johnson, of Site Work Studios, to discuss the potential driveway that would be constructed parallel to Vanderbilt Road and connect to the rear of the Double Tree parking lot. Mr. Johnson said the length of this road would be significantly greater and result in much more clearing. Mr. Goosmann and Mr. Chandler each asked about whether the existing screening, coupled with additional screening, would not be enough to cover the disruption to the forest. Mr. Johnson noted that the existing trees are so much taller than any screening that would be replaced. Mr. Johnson further noted that the mature Beech trees and Beech forest hold onto their leaves longer in the winter and that this helps screen the area. Mr. Johnson said it was not a clear cutting, responding to a question by Mr. Chandler, but was a huge swatch being cut through the ravine.

Mr. Goosmann asked whether any reforestation would replace the forested trees area. Mr. Johnson said it would take a long time, and in his professional opinion, he believed this would be a huge detrimental impact to the Town of Biltmore Forest. Mr. Johnson that he had a good number of clients in the Town and he would not like to be a part of the group that led to this proposed access.

Mr. Pearlman commented that he believed the Board should deliberate on the matter and reconvene with a decision at a later time. Mr. Chandler asked a question of Mr. Kincheloe and Mr. Jones as to the problems with entering from the south side of the property near the interstate. Mr. Jones and Mr. Voso said that the D.O.T. would not allow the controlled access to be infringed upon.

Dr. Landau asked about whether additional width was available on the MAHEC campus to construct a third lane for traffic that would alleviate some of the issues with traffic leaving onto Hendersonville Road. Dr. Heck said that he believed the right turn lane would be helpful but not alleviate the need for the emergency access. Discussion followed about the need to still have a dedicated second access.

The Board voted unanimously to withhold the vote at the present time and will reconvene within thirty (30) days to make a decision.

A special call meeting was set for Tuesday, November 1, 2016 to render a decision on the MAHEC application. The regular meeting for the Board of Adjustments in November was set for Monday, November 14, 2016.

The meeting was adjourned at 6:08 p.m.

ATTEST:

Greg Goosmann
Chairman

Jonathan B. Kanipe
Town Administrator



MEMORANDUM
NOVEMBER 14, 2016

To: Board of Adjustment
From: Jonathan Kanipe, Town Administrator
Re: Case 1 – 18 Cedar Hill Drive
Date: November 10, 2016

Case 1

Property Owner: John and Brandy Shenk
Property Address: 18 Cedar Hill Drive
Zoning District: R-1
Lot Size: 1.19 +/- acres
Application Request: Conditional Use Permit Request for Fence Construction in Rear Yard

The applicants request permission from the Board to construct a black aluminum fence in the rear yard. The proposed fence will be six (6) feet tall and three-rail ornamental aluminum. Per discussion from the applicants prior to the meeting, they are concerned about wildlife (including bears) and other dogs that come on to their property and would like this fence to protect their rear yard and allow a safe space for their children to play.

The applicants plan to construct the fence in compliance with the setbacks. The applicants received approval from the Board in May 2016 for a tree removal project and have begun replanting as proposed in that application. The applicants do not believe the fence will be able to be seen from the road and that adequate screening is in place to prevent views from adjoining property owners.

Zoning Application

Property Identification

Name

Dave Shenk

Address

18 cedar hill rd, biltmore forest, North Carolina 28803

Phone

(828) 808-3530

Email

dave@shenk.in

Zoning

R-1

Lot Size (Acres)

1.19

Email -Submission Verification

mittchell@ashevillefence.com

Scope of Project-Roof Coverage

Does the project include increasing roof coverage?

No

Is the proposed roof coverage greater than the permitted maximum roof coverage?

No

Scope of Project-Impervious Surface

Does the project include increasing the impervious surface coverage?

No

Scope of Project-Setbacks

Does any part of the project fall within the front yard?

No

Does any part of the project fall within the side/rear yard setback(s)s?

No

Scope of Project-Accessory Structures

Does the project include a detached structure or building?

No

Will there be more than the approved number of

accessory structures/buildings?

No

Project Description

Brief Description of Project

The project is to install a black aluminum fence in the back yard. Fence will be 6' tall 3 rail ornamental aluminum. Manufacture is alumi guard aluminum fence in the series Asscott style. Fence is designed to provide a safe area for the children to play. Fence should not be able to be seen from the road.

Estimated Cost of Project

10,282

Estimated Completion Date

11/16/2016

Please attach any drawings, renderings, photographs or other supporting documentation.

Shenk fence project.jpg

ag_ustxpn.jpg

Conditional Use Permit Application

I hereby petition the Board of Adjustment to issue a Conditional Use Permit for:

Name

Dave Shenk

Property Address

18 Cedar Hill rd

Phone

(828) 808-3530

Email

dave@shenk.in

Type of Conditional Use

802.07 Accessory Buildings

Email-Submission Verification

mitchell@ashevillefence.com

Description of Project

install a fence in the back yard. fence will be 6' black ornamental fence made by Alumi-guard. The fence will be the asscot style. There will be two gates one walk gate and one single gate 6' wide for the landscape crews.

Explain why the project would not adversely affect the public interest of those living in the neighborhood:

The fence will be in the back yard and should not be able to be seen from the road.

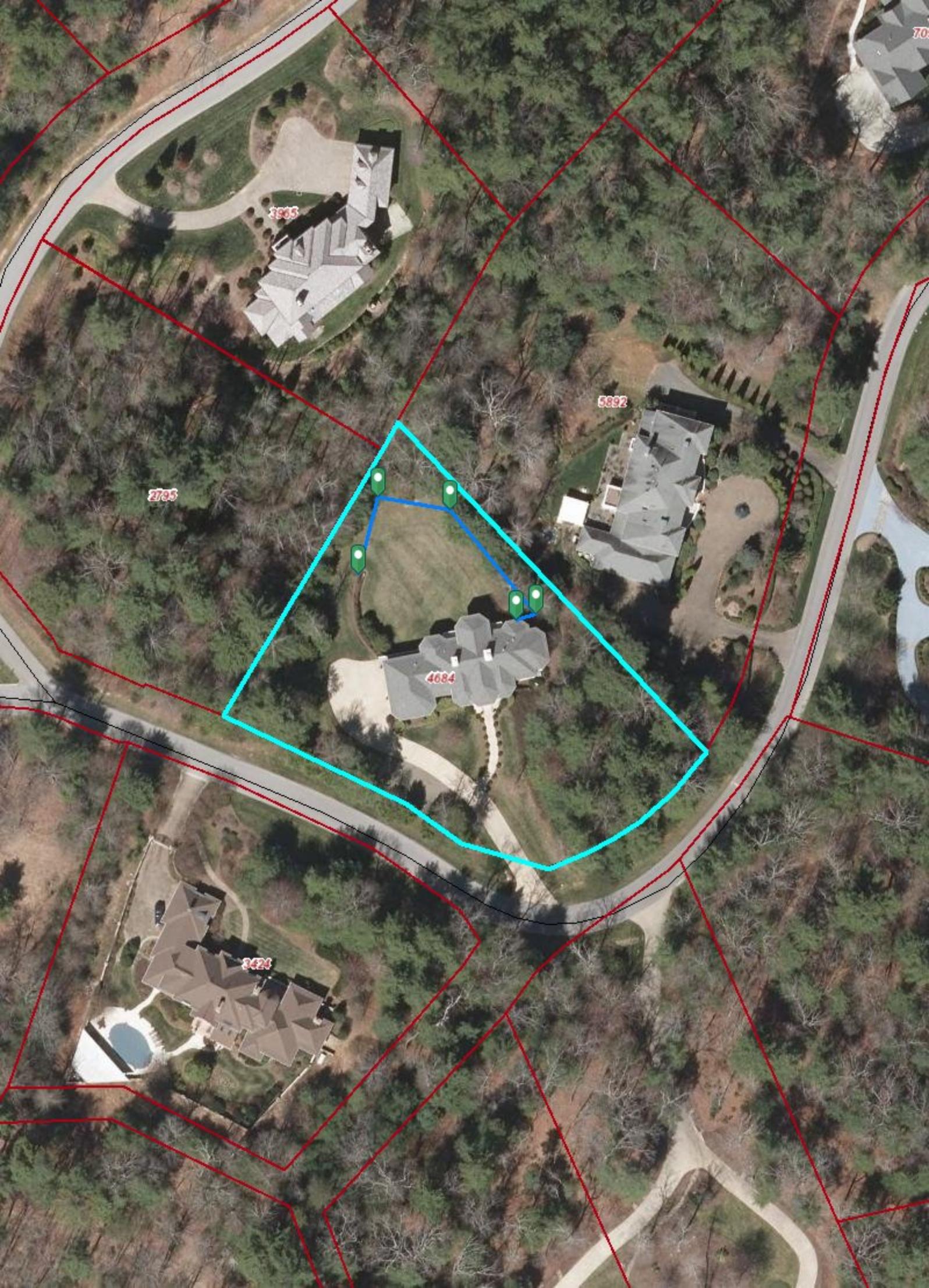
I certify that the information presented by the undersigned in this application is accurate to the best of my knowledge, information and belief.

Signature



Date

10/19/2016



3935

2765

4684

5892

3424

70

71.375" PANEL SERIES-A - DBL PKT
3-CH 72" RESIDENTIAL

ALUMINUM FENCE SUPPLY	DATE:	10/28/2016
PO/JOB NAME:	ITEM:	PANEL
QUOTE NO: Q16102803	HINGE TYPE:	---
COLOR: ---	DAYLIGHT OPENING:	----
APPROVAL SIGNATURE (REQUIRED):		

1.00" x 1.125" CHANNEL
.070" TOPWALL
.070" SIDEWALL

71 3/8"

0"
1"
5 7/8"

.625" x .625" x .050"
PICKET

70"
73"

GRADE

72"

10/28/16





MEMORANDUM
NOVEMBER 14, 2016

To: Board of Adjustment
From: Jonathan Kanipe, Town Administrator
Re: Case 2 – 6 Westwood Road
Date: November 10, 2016

Case 2

Property Owner: Heather Koch
Property Address: 6 Westwood Road
Zoning District: R-1
Lot Size: 1.00 +/- acres
Application Request: Conditional Use Permit and Variance Request for
Garden Wall and Stone Column Construction

The applicant requests permission to allow the construction of three (3) garden walls in the front yard of her property. This property has been before the Board on several occasions, most notably when the rock wall on the property was removed and scheduled to be replaced. The Board, in July 2014, issued an approval for Ms. Koch to reconstruct the stone wall in the same place as the prior wall. Due to issues with the lack of foundation for the stone wall, this project was not undertaken.

In November 2014, Ms. Koch received approval from the Board to construct a berm in the front yard that would be planted with hollies and create some of the buffering from the road for her property. This was allowed as an amendment to their previous permit from July of that year. Since that time, Ms. Koch has taken on several projects on the property including repainting the home, repairing the roof, and attempting to recreate the buffer between Westwood Road and her home. The Town did ask that the rock left over from the original stone wall be removed or at least relocated on the property from its location in the front yard last year. Ms. Koch did move this, but also undertook creating these three garden walls for planting purposes as the hollies and berm that was created did not work to accomplish this buffering. Town staff met with Ms. Koch and she applied for the conditional use permit and variance from the Board to allow the construction of the garden beds. The existing berm is still in place and Ms. Koch has planted some significant Norway spruce trees that has provided ample screening for her property. The walls, at present,

are not visible from the road and are approximately 2'3" in height. The garden walls are 26 feet, 33 feet, and 15 feet in length and represent Ms. Koch's attempt to reuse much of the stone and brick that remained on her property.

Ms. Koch has also requested permission from the Board to hang an original iron gate on the existing stone wall on the property. This gate was previously on the stone wall, but will require a five foot tall column to be constructed on the southern boundary of the property.

In addition to the conditional use and variance applications, I have asked Ms. Koch for drawings of the walls. Since they have already been constructed, these will be visible and available for review by the Board as to their exact placement and visibility once we view the site Monday.

Conditional Use Permit Application

I hereby petition the Board of Adjustment to issue a Conditional Use Permit for:

Name

Heather Koch

Property Address

6 Westwood Road

Phone

(312) 285-1085

Email

featherlings@gmail.com

Type of Conditional Use

802.01 Planned Unit Development

Email-Submission Verification

featherlings@gmail.com

Description of Project

The Type of Conditional Use Drop Down Box is confusing- as I do not see the accurate description?

H.Koch

6 Westwood Road

3 Garden Retaining Walls

Retaining Wall A 26 Feet

Retaining Wall B 33 Feet

Retaining Wall C 15 Feet

Height 2'3"

- Column is to be 5 feet high & 2 x 2 Square. Purpose is to hang original Gate. Rod Iron Gate is 5 ft high x 3 ft wide.
- All materials are existing from previous Wall: North Carolina Stone & Red Brick from property.
- 5 foot Variance for parkway is meet with Norway Spruce Trees.

Explain why the project would not adversely affect the public interest of those living in the neighborhood:

Cannot be seen by neighborhood- also beautifies area for landscaping

I certify that the information presented by the undersigned in this application is accurate to the best of my knowledge, information and belief.

Signature

Date

11/7/2016



Variance Application

I hereby petition the Board of Adjustment for a variance(s) from the provisions of the Zoning Ordinance for the real property stated below.

Name

Heather Koch

Property Address

6 Westwood Road

Email

hk@icarustrading.com

Phone

(312) 285-1085

Email-Submission Verification

hk@icarustrading.com

Variance to Zoning Ordinance Section(s) (Select all that apply)

1103 Required Yards & Other Spaces

N.C.G.S. 160A-388(D) requires that the Board of Adjustments shall vary the provisions of the Zoning Ordinance only upon a showing of ALL the following:

- 1) Unnecessary hardship would result from the strict application of the ordinance.
- 2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
- 3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
- 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.

State specific hardship that results in variance request to not comply with the Zoning Ordinance

Start of retaining Wall A is 15 feet from road and 10 feet from 8 Westwood Road.

State what conditions are peculiar to the property that require a variance.

Oddly Shaped property. Tens of thousands of pounds of rock on property due to demolition of prior wall along front of property.

Did the hardship result from actions taken by the applicant or property owner?

Property Owner?

State how the requested variance is consistent with the spirit, purpose, and intent of the ordinance.

The Retaining Wall Cannot be seen by neighbors or from Road due to low height of wall and the addition of 16 Large Norway Spruce trees

In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with the Zoning Ordinance. Violations of the provisions of the variance granted including any conditions or safeguards which are part of the granting of the variance, shall be deemed a violation of the

Zoning Ordinance. I hereby certify that the information set forth above is true and accurate to the best of my knowledge.

Signature

Date

11/7/2016

A handwritten signature in black ink, appearing to read "D. K. ...", written over a horizontal line.