



To: Members of the Board of Adjustment, Applicants & Neighboring Property Owners  
From: Jonathan B. Kanipe, Zoning Administrator  
Date: January 2, 2020  
Re: **Board of Adjustment Meeting – January 13, 2020**

## 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 **Thursday January 16, 2020 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 or online at <http://www.biltmoreforest.org/board-of-adjustments>.

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, January 13, 2020 at 4:00 pm 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 December 16, 2019 regular meeting will be considered.
- 3) Hearing of Cases (Evidentiary Hearings, Deliberations & Determinations):

Case 1: A Special Use Permit is requested for property located at 15 Cedar Chine Drive for placement of landscaping boulders.

- 4) Adjourn

MINUTES OF THE BOARD OF ADJUSTMENT MEETING  
HELD MONDAY, DECEMBER 16, 2019.

The Board of Adjustment met at 4:00 p.m. on Monday, December 16, 2019.

Members present: Goosmann, Groce, Kieffer, Chandler, Landau, and Pearlman. Mr. Jonathan Kanipe, Town Manager, and Ms. Adrienne Isenhower, Town Planner, were also present. Mr. William Clarke, Town Attorney was not present. Ms. Jacqueline Grant was present from Roberts & Stevens.

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

Mr. Goosmann swore in the following:

Mr. Jonathan Kanipe  
Ms. Adrienne Isenhower  
Mr. Houston Hammond  
Dr. Wesley Fowler  
Ms. Johanna Fowler  
Mr. Howard McDill  
Mr. Rob Dull  
Mr. Mark Rudolf  
Ms. Martha Barnes  
Ms. Joyce Young  
Ms. Diane Zimmerman  
Mr. Paul Zimmerman  
Mr. David Nelson  
Mr. Ben Mitchell  
Ms. Heidi Bell  
Mr. Ron Fagan

A motion was made by Ms. Lynn Kieffer to approve the minutes from November 18, 2019. Ms. Rhoda Groce seconded the motion. The minutes were approved unanimously.

HEARING (Evidentiary):

The first matter discussed was a Special Use Permit requested for the property at 11 Westwood Road for placement of landscaping boulders. A variance is requested for location of the boulders in the front yard setback. Mr. Robert Chandler shepherded the discussion. Dr. Fowler said there is an erosion issue on this property. Dr. Fowler showed the bank has lost many trees and has erosion issues within the setback. They would like to place boulders set into the bank to control the erosion issue. They would also like to plant vegetation in this area. Dr. Fowler showed the Board pictures of the boulders and where they will be placed. There will be four placed on one side of the driveway set apart about 20 feet and one placed in the center of the island on the property. Dr. Fowler showed the Board a property on Southwood Road that inspired his idea. The total number of boulders being placed was not clear.

Mr. Pearlman asked what the hardship is. Dr. Fowler said the hardship is the difficulty with the erosion. Chairman Goosmann verified it would be a combination of boulders and plantings that will be placed. Dr. Fowler said yes.

Mr. Chandler asked if Dr. Fowler could talk more about the plantings. There will be rhododendrons and ferns that will be placed.

Chairman Goosmann read Statute 153.110, Section D of “Powers and Duties of the Board of Adjustment.” *Variances*. Upon application, when unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the Board of Adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following:

(1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property;

(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 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; and

(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.

Ms. Kieffer asked if the landscaping would be thick enough to conceal the boulders. Dr. Fowler said yes.

Chairman Goosmann asked if there were any additional questions or comments regarding this case. Mr. Paul Zimmerman asked if there were any trees being taken down. Dr. Fowler said there would be no trees taken down. Mr. Zimmerman asked how close to the road the boulders would be placed. Dr. Fowler said they would be placed approximately 15-20 feet from the road. Mr. Zimmerman asked what role the boulders play in preventing erosion when they could actually increase erosion. Dr. Fowler said with the spacing and the vegetation planted around, it will prevent the erosion. Mr. Zimmerman said the vegetation should be the primary focus for erosion control and asked Dr. Fowler why they need rocks. Ms. Fowler said rocks would be planted because the deer will have less chance of destroying the vegetation. Ms. Fowler said they have spent thousands of dollars trying to plant in this area and it is deep shade, dry shade, and clay soil with extremely heavy deer traffic. Much of the prior vegetation was destroyed by the deer so the primary benefit of having the rock is that deer do not eat rocks. The rocks are indigenous and they have other rocks on their property as well.

Ms. Zimmerman asked what would be planted there. The larger rhododendron and autumn ferns will be planted.

Mr. Chandler recited the facts. Dr. Wesley Fowler and Ms. Johanna Fowler at 11 Westwood Road are requesting a Special Use Permit for placement of their landscaping boulders. They are also requesting a variance for location of the boulders in the front yard setback. Four

boulders/rocks will be placed within their front yard setback 15-20 feet from the road. Four boulders will be placed along their front yard to help prevent erosion control and supplement with plantings after the rocks are put in.

Ms. Zimmerman asked for clarification on how many boulders will be placed. There will be six boulders placed but only four boulders needed approval.

Ms. Joyce Young asked why boulders are necessary if the vegetation will be sufficient. Dr. Fowler said as Ms. Fowler explained earlier, deer do not eat boulders and it will help with the appearance and will help with the erosion.

Mr. Zimmerman is very concerned with the water flow. As previous experience as a chemical engineer, Mr. Zimmerman does not feel the boulders will help with erosion control. Dr. Fowler said the biggest boulder is a two-ton boulder and should provide some stabilization.

Ms. Kieffer said what they planted along the driveway seems to be flourishing. Dr. Fowler agreed.

Dr. Rich Landau said the boulders are an aesthetic feature, which is similar to the landscaping. It is also a natural product but the problem which is mentioned in the bylaws, is that the boulders are in the setback. Dr. Landau said the landscaping along their driveway looks very aesthetically pleasing.

Dr. Landau said he is in support of the project and does not see how adding a boulder would adversely affect the community. Ms. Zimmerman said there is already an ordinance about this. Dr. Landau said just because there is an ordinance does not mean the ordinance is correct.

Ms. Jackie Grant said there has to be a hardship. The boulders would actually have to address the erosion control issue, which has been discussed. Assuming there are no other measures that they need the boulders with the vegetation in order to do the erosion control. That would give them erosion control. One cannot go off aesthetics alone. This is not how one gets a variance. One has to have a hardship in order to get a variance granted.

Mr. Robert Chandler said this rock is augmenting what plants will do and then will help with the erosion in a way they cannot do without. Ms. Grant said that is part of what the Board

does is decide if enough information has been presented to demonstrate these two ton boulders would help eliminate the erosion control issue.

Ms. Joyce Young said there really is not such a thing as deer proof vegetation and deer will eat vegetation if they are hungry enough.

Chairman Goosmann asked the Fowler's if they are willing to go back and plant additional vegetation if needed in the future. They agreed to plant additional vegetation if needed.

DELIBERATION AND DETERMINATION:

Ms. Lynn Kieffer recited the facts and moved that a Special Use Permit and variance as requested be granted to Dr. Wesley Fowler and Ms. Johanna Fowler of 11 Westwood Road for a Special Use for the landscape boulders and a variance for the boulders to be placed in the front yard setback. 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 no neighboring property owner has objected. Ms. Kieffer further moved that granting this Special 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 153.110 (C)(2-3) of the above ordinance. 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.

Further, Ms. Kieffer moved that granting a variance satisfies the applicable Sections of 153.110(D) 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. She 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. Rich Landau seconded the motion. The motion was unanimously approved.

HEARING (Evidentiary):

A Special Use Permit is requested for property located at 57 Chauncey Circle for construction of a swimming pool with a barrier of fencing, walls, and hedges. A variance is requested for construction of a wall in the front yard setback and for exceeding the maximum amount of roof coverage allowed. Mr. Mark Rudolf represented the homeowners. Mr. Lowell Pearlman shepherded the discussion.

Mr. Pearlman discussed the allowable roof coverage with Mr. Rudolf. Mr. Pearlman pointed out the drawing shows 17 percent overage within the allowed maximum roof coverage. Mr. Rudolf said that was a correct statement.

DELIBERATION AND DETERMINATION:

Mr. Rudolf asked for an extension to confer with his client. The Board was also concerned with the wall in the front yard setback. This entire matter will be brought back up at next month's Board of Adjustment meeting. The matter was tabled until a subsequent meeting.

HEARING (Evidentiary):

A Special Use Permit is requested for a property located at 23 Eastwood Road for new landscaping to include accessory structures and hardscaping. A variance is requested for exceeding the maximum amount of roof coverage allowed. Dr. Rich Landau shepherded the discussion. Mr. Rob Dull and Mr. Houston Hammond represented the property owner. The plans show 2 percent over the maximum roof coverage. They are 2 percent over due to the grilling deck. It is on the “golf” side of the property. The plans were described to a neighboring property owner and she asked if she would see the outside grill. Mr. Dull said no. The chain link fence will also be removed. The biggest concern was if there would be large trees planted since the neighboring property owners enjoy seeing their view of Mt. Pisgah. Mr. Dull said there would be no large trees planted. The fencing will be integrated into the stone columns and wall.

Mr. Pearlman asked if the 2 percent roof coverage overage were not approved, how they would proceed. Mr. McDill said they would redesign the entire plan. Mr. Pearlman said there was no hardship and would they remove the grill from the petition so it does not cause the overage in roof coverage. Ms. Grant said there has to be a hardship in order for the variance to be granted. In this case, there is no hardship.

Dr. Landau said this is working with existing construction. In other homes that have been remodeled with a lot of roof overhang, it has been allowed in the past. Dr. Landau wanted to know why in the past we allowed roof overhang and in this case, it is not allowed. Mr. Chandler said the previous case has a hardship. Mr. Pearlman said he is against going against what the ordinance says.

Ms. Grant defined what a hardship really is, is there being no way around it and for this to work, x, y, and z have to be done. The matter was tabled and the this portion of the design will be brought back to the Board later.

Trees will be removed and retaining walls and a fountain will be added. A blue stone terrace will also be added. A neighboring property owner reminded the Board about the stone fountain being a historical piece and built from when the house was built. The fountain will be moved to a different location at the house and will not be destroyed. The archway goes back to the 1920s.

The retaining wall will be a stone veneer. The stone will be visible more from the golf course. The top of the wall at its highest point is 7.5'. The plan was reviewed with Michael Heustis from the Biltmore Forest Country Club. The roof material will be the same but more of a slate color. The turrets will be on the front. There will be work done to the patio as well. The angel will not be removed. The trees that are being planted were discussed. There will also be many trees being removed. The Town Arborist visited to give approval for the trees that needed to be removed.

#### DELIBERATION AND DETERMINATION:

Dr. Landau recited the facts and moved that a Special Use Permit be granted to the owners at 23 Eastwood for accessory structures hardscapes and landscape plan approval for removal of more than 10 protected trees. The Special Use Permit requires replacing the driveway with pavers, stone steppers, and stone steps in the rear yard, replacing the fountain in the front, adding a fountain in the rear yard, and two retaining walls. One will be in the rear yard, which will have a fence around to enclose the garden area, there will also be a smaller retaining wall which will be smaller and placed deeper into the rear yard. The variance for the roof coverage was withdrawn. Ms. Kieffer asked for a representative from Sitework Studios to spend more time with the neighboring property owner to go over the plan because she is expressing a lot of concern regarding the landscaping. There were no additions to the facts.

Ms. Rhoda Groce moved that a Special Use Permit be granted to Tom and Char Hand of 23 Eastwood Road for new landscaping to include accessory structures and hardscaping, and the landscape plan be approved as requested as the applicants are requesting removal of more than ten protected trees. The facts as recited by Richard Landau and his summation be accepted as findings and facts to support this grant. The Board has inspected this site and no neighboring property owner has objected. Ms. Groce further moved that granting this Special 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 153.110 (C)(2-3) of the above ordinance. 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.

The motion was seconded by Mr. Lowell Pearlman and was unanimously approved.

HEARING (Evidentiary):

A Special Use Permit is requested for property located at 121 Hendersonville Road (MAHEC) for construction of a 4.5 level parking garage. Mr. Ron Fagan posted the plans for the audience. Ms. Groce shepherded the case. Ms. Groce said the plans are now for a 3.5 level parking garage that includes 394 additional spaces versus 450 spaces in the original plan. There is an issue with parking capacity and instead of placing the parking deck on the pavement level, they will place it in the back and take advantage of the slope. There will be two floors below ground and two floors above ground. This will also allow fire truck access underneath the parking deck. Mr. Fagan confirmed they do not need the secondary access road that they thought was needed earlier. Ms. Groce discussed with Mr. Fagan the impact of traffic in Biltmore Forest. Mr. Fagan said the biggest parking challenge for MAHEC is providing enough parking spaces for patients and visitors. This deck is dedicated to employees and staff only. A traffic study was also previously done. This will also make it easier for visitors to park and improve accessibility.

Chairman Goosmann asked for slides to be shown to the audience of what the proposed parking deck will look like. Ms. Kieffer asked about the lights on the top deck. Mr. Fagan said they would be full shut off lights which will most likely be turned off in the evening. Ms. Groce asked about buffering. Mr. Fagan said buffering will be added around the MSD sewer lines (which will be abandoned in the future). Mr. Kanipe noted the parking deck submitted as an L-shape was previously approved by the Board in 2016.

Mr. Robert Chandler asked if they had discussed the proposed project with Biltmore Farms. Mr. Fagan said yes. A written statement was provided by Biltmore Farms for MAHEC to construct the parking deck.

Ms. Diane Zimmerman asked for clarification on how many stories the parking deck is. Chairman Goosmann said it will be four stories and approximately two of the stories will be below grade. Mr. Fagan confirmed this. Ms. Kieffer said MAHEC has done an amazing job with landscaping and was glad to see the additional landscaping being put in at the MSD lines.

Ms. Diane Zimmerman asked how late employees work at night. Mr. Fagan said at the latest 10:30 pm.

#### DELIBERATION AND DETERMINATION:

Ms. Groce recited the facts. MAHEC at 121 Hendersonville Road is requesting a Special Use Permit for construction of a 3.5 level parking garage. It will create 394 additional parking spaces. There will be 1006 spaces for the facility. MAHEC is willing to provide additional landscape buffering if needed. Chairman Goosmann asked for clarification on the number of stories of the parking deck. Mr. Fagan said it would be a total of four stories. There were no additions to the facts. There were no additional questions.

Mr. Lowell Pearlman requested that a Special Use Permit be granted to MAHEC at 121 Hendersonville Road for a parking deck and the facts as supported by Rhoda Groce and her summation be accepted as findings and facts to support this grant. The Board has inspected this site and no neighboring property owner has objected. Mr. Pearlman further moved that granting this Special 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 153.110 (C)(2-3) of the above ordinance. 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.

Mr. Chandler seconded the motion. The motion was unanimously approved.

Chairman Goosmann adjourned the meeting at 5:23 pm. The next Board of Adjustment meeting was scheduled for Monday, January 13, 2019 at 4:00 pm.

ATTEST:

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Greg Goosmann  
Chairman

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Laura Jacobs  
Town Clerk

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[www.biltmoreforest.org](http://www.biltmoreforest.org)



George F. Goosmann, III, Mayor  
Fran G. Cogburn, Mayor-Pro Tem  
E. Glenn Kelly, Commissioner  
Doris P. Loomis, Commissioner

Jonathan B. Kanipe,  
Town Manager

## MEMORANDUM

To: Board of Adjustments Members  
From: Jonathan Kanipe, Town Manager  
Re: Board of Adjustments Case Number 1 (15 Cedar Chine Drive)  
Date: January 9, 2020

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### Request for Special Use Permit for Placement of Landscaping Boulders

A Special Use Permit is requested for property located at 15 Cedar Chine Drive for placement of landscaping boulders. As part of a new landscaping plan, three boulders are placed in the front yard around a relocated tree. The newly landscaped area is located directly adjacent to the driveway and facing Cedar Chine Drive. The area does not encroach upon the front or side yard setbacks. Photographs of the boulders and their location are included.

As a reminder, boulders are considered accessory structures by the zoning ordinance definition, requiring approval of a special use permit.

***ACCESSORY STRUCTURE.*** A structure incidental and subordinate to the principal use or building on the lot and located on the same lot with such principal use or building. ***ACCESSORY STRUCTURES*** include, but are not limited to, fences, walls, curbs, pools, play sets, statues, water features, playhouses, decorative walls, sculptures, solar collectors, residential street lamps, rock and stone moved from its original location to any other location on the property, and the like.

# Zoning Compliance Application

Town of Biltmore Forest

**Name**

Ralph and Doris Loomis

**Property Address**

15 Cedar Chine

**Phone**

(828) 712-8552

**Email**

dsploomis@charter.net

**Parcel ID/PIN Number**

## ZONING INFORMATION

**Current Zoning**

R-1

**Lot Size**

2+ acres

**Maximum Roof Coverage**

6,700 square feet (Up to 2.5 acres)

**Proposed Roof Coverage Total**

n/a

**Maximum Impervious Surface Coverage**

1-3 acres (25 percent of lot area)

**Proposed Impervious Surface Coverage**

n/a

**Front Yard Setback**

60 feet (R-1 District)

**Side Yard Setback**

20 feet (R-1 District)

**Rear Yard Setback**

25 feet (R-1 District)

**Building Height**

n/a

**Description of the Proposed Project**

Three boulders placed around a replanted Japanese Maple as part of new landscaping project

**Estimated Start Date**

10/1/2019

**Estimated Completion Date**

1/31/2020

**Estimated Cost of Project**

\$20,000.00

**Supporting Documentation (Site Plan, Drawings, Other Information)**

**Applicant Signature**

**Date**  
1/6/2020

*Doisloomis*

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# Special Use Permit

## Special Use Permit Application

Town of Biltmore Forest

### Name

Ralph and Doris

Loomis

### Address

15 Cedar Chine

### Phone

828-712-8552

### Email

dsploomis@charter.net

**Please select the type of special use you are applying for: \***

Accessory Structures



The applicant must show that the proposed use will not materially endanger public health or safety or injure value of adjoining or abutting property. In addition, the proposed use must be in general conformity with the plan of development of the town and be in harmony with scale, bulk, height, coverage, density, and character of the neighborhood.

**Please provide a description of the proposed project: \***

Placement of three boulders within front yard setback around a Japanese maple tree recently moved as a part of new landscaping of the front and side yards.

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

No setbacks are violated by placement of the boulders which are in keeping with the overall landscaping updates in the front and side yards.

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

Signature

Date

12/10/2019 📅



Submit

Save



