

MINUTES OF THE BOARD OF ADJUSTMENT MEETING
HELD MONDAY, JANUARY 25, 2021

The Board of Adjustment met at 4:00 p.m. on Monday, January 25, 2021. The meeting was held virtually via Zoom.

Members present: Mr. Greg Goosmann, Ms. Rhoda Groce, Mr. Robert Chandler, Ms. Lynn Kieffer, and Mr. Lowell Pearlman. Ms. Martha Barnes, alternate member, was also present. Mr. Jonathan Kanipe, Town Manager, Mr. Harry Buckner, Public Works Director, Mr. Mike Dale, Assistant Public Works Director, and Mr. William Clarke, Town Attorney were also present.

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

Mr. Goosmann swore in the following:

Mr. Jonathan Kanipe
Mr. Harry Buckner
Mr. Jim Davis
Ms. Terry Davis
Mr. Kevin Brown
Mr. Hunter Dendy
Ms. Ann Jennings
Mr. Horace Jennings
Mr. Brian Morris

A motion was made by Ms. Lynn Kieffer to approve the minutes from December 14, 2020. Roll call was taken. Ms. Rhoda Groce seconded the motion and was unanimously approved.

HEARING (Evidentiary):

A Special Use Permit was requested for 24 Busbee Road. A variance is requested for the installation of a driveway in the side setback in conjunction with the construction of a new

residence. A landscaping plan is included for review and consideration by the Board of Adjustment. Mr. Pearlman shepherded the matter. Mr. Jim Davis described the landscaping plan and said they reviewed the requirements of the Town and want to plant materials that will survive with semi sunlight. They also want to have these plantings in as a buffer before the construction process begins to help eliminate some of the noise. When the driveway is built, they are going to take some of the dirt from the house to create a slope for the driveway, which will be further up the hill from the neighbors. For the two sets of neighbors, the Wyatts and Jennings, there will be a significant landscape buffer. There is a planned motor court in the back and there will be a buffer along that. The goal is to buffer so the house cannot be seen from Busbee Road. They would like to keep as many trees as possible that are currently on the property.

Mr. Pearlman suggested proceeding to the variance request because this will impact the landscaping plan. Mr. Davis showed the Board the landscaping plan and showed the setback line and where the driveway enters the setback. This is where they are requesting the variance. Mr. Davis said the space within the setback is around 16 feet. Mr. Pearlman clarified and said the encroachment and the setback in the driveway has a total length of 16 feet. Mr. Davis said no, the 16 feet is the distance within the setback, which is the width of the setback. Ms. Davis said it measures 16.2 feet. Ms. Kieffer said they would like to keep it to at least 15 feet. Ms. Davis said this is for the safety of the garbage trucks, emergency vehicles, and the mail carrier. Ms. Kieffer said if the house were brought forward, it would make the grade steeper. Mr. Davis said yes, the landscape architect is currently working on how much the house would have to be moved over to minimize the setback. They tried to balance keeping trees on both sides of the house. Mr. Davis said if the house were to be moved over and the driveway would be less into the setback, many more trees would have to be removed.

Mr. Pearlman asked about the hardship and if the placement of the house would create the hardship. Mr. Davis said they thought a lot about where to place the house and they prefer not to encroach on Ms. Diefenthal and cut down additional trees.

Chairman Goosmann said the lot is unique in the shape and size of it in the rear and said there is a double rear setback as well as issues Ms. Davis described with safety. Mr. Clarke said

the Board could take all these things into consideration such as the slope of the lot and the shape of the lot which are not things the current owner had anything to do with. The variance statute says, "Practical difficulties or unnecessary hardship." If strict application of the zoning regulation is going to result in practical difficulty or unnecessary hardship, that is when the Board can grant a variance. At least four out of the five Board members have to vote in favor. Ms. Kieffer asked Mr. & Mrs. Davis if there is a possibility of slightly adjusting the house to the right toward the Diefenthal property. Mr. Davis showed the Board that specific plan of what it would look like to adjust the house to the right. The slope is currently 15.5 feet and if the house were to be adjusted to the right, it would be less than 18 feet.

Ms. Barnes asked about the linear feet that were encroaching. Mr. Davis said it was 75 linear feet and the other plan is considerably less.

Ms. Kieffer said Mr. and Mrs. Davis are working with the Jennings by telling them there will be significant buffering between them and the Davis property.

Chairman Goosmann verified the proposal could be revised to cut into the setback to cut down half the width, the linear distance looks like it would be about the same and the Davis' have put in much effort to buffer between neighbors.

Mr. Pearlman said the Board of Adjustment received a late letter from Mr. McCue who is a neighboring property owner regarding the proposed project. Mr. Kanipe said the email came in late yesterday and there was no definitive support or opposition to the proposal. Mr. Kanipe said the message was directed toward the site of the proposed home and not the home itself. Mr. Kanipe read a sentence out of the letter Mr. McCue wrote which states, "His driveway will be so steep and long, and he'll have less privacy long-term than if he locates his residence nearer the center of his property."

Mr. Pearlman said the Board discussed the possibility if the owner wanted to postpone the application; they can bring it back in 30 days. If the Board denies it, the owner would not have the ability to build on the property for one year. Mr. Pearlman also suggested Mr. Davis have a discussion with Mr. McCue to clarify what Mr. McCue wrote in his letter.

Chairman Goosmann asked Mr. Clarke to revisit Mr. Pearlman's comment regarding the timeline for reapplication.

Mr. Clarke said if a request for a variance were denied, then Mr. Davis would have to wait some time to come back. Mr. Clarke said Mr. Davis can build but he cannot come back and ask for the same variance. Chairman Goosmann said Mr. Davis could still build as long as the setback was not violated. Mr. Clarke agreed. Mr. Goosmann said four out of the five members would have to vote since Chairman Goosmann would not vote in this matter.

Ms. Kieffer said if the house is moved forward, it would be sitting in the backyard of the Jennings and the other neighbor. If the house were moved forward even more, it would be difficult to keep the grade of the driveway below 18%.

Ms. Barnes said based on Mr. McCue's letter, the Board read it and are not sure where Mr. McCue stands. Ms. Barnes said if the Board does approve it, what would be Mr. McCue's recourse. Mr. Clarke said if the statement were to be considered, the person writing the letter would need to attend the hearing. In this case, it would be attended via Zoom. Mr. McCue let Mr. Kanipe know that he would not be able to attend the Zoom meeting so that is why he submitted the email to Mr. Kanipe. Mr. Davis reached out to Mr. McCue in December and much information was exchanged about the details of the home. Mr. Davis said they met with the McCue's on January 5.

Mr. Morris described the two rows of vegetation that will be planted on the corner of where the McCue and Davis yards meet. Ms. Barnes asked Mr. and Mrs. Davis if a neighbor requested further buffering, would they be willing to do so. Mr. and Mrs. Davis said yes.

Mr. Davis said he would try his best to talk to Mr. McCue again. Mr. Davis said they have cut the depth in half and what he is showing the Board today is what he would like to submit.

Ms. Kieffer said there would be about 75 feet between the back of the Jennings house and the edge of the driveway. Mr. Davis said approximately 50-75 feet.

DELIBERATION AND DETERMINATION:

Mr. Pearlman recited the facts. Thomas and Terry Davis at 24 Busbee are applying for a setback variance on a new home they are proposing to build toward the rear corner of the lot. There will be an infringement of eight feet and just under 75 feet long. There has been one letter from an adjoining property owner who has not attended the meeting and the Board is not sure whether the letter is in support, neutral, or against the proposal, which needs to be taken into account.

Chairman Goosmann asked if Mr. Davis was going to change the encroachment from eight feet to 12.5 feet. Mr. Davis said the extra couple of feet would help with the tree situation. Mr. Davis said he does not want to wait a year and is unsure.

Mr. Clarke said the Board needs clarification on whether they would like to stick with eight feet or increase to 12.5 feet. Mr. Davis said he would like to amend the variance request to a maximum of ten feet.

Mrs. Davis thanked the Board for all of their hard work and time they have put in for this case.

Chairman Goosmann also thanked Mr. and Mrs. Davis for putting in so much effort to speak with the neighbors and preserving the trees on this lot, which is so important in Biltmore Forest as a whole.

Ms. Lynn Kieffer moved that a variance as requested be granted to Jim and Terry Davis of 24 Busbee Road for a driveway variance and the facts as recited by Lowell Pearlman 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 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 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.

Ms. Martha Barnes seconded the motion. Mr. Chandler asked Mr. Clarke if he felt comfortable for the justification of the Variance. Mr. Clarke said yes. Chairman Goosmann took roll call.

Mr. Chandler voted aye, Ms. Martha Barnes voted aye, Mr. Lowell Pearlman voted aye, Ms. Lynn Kieffer voted aye, and Ms. Rhoda Groce voted nay. Chairman Goosmann said the motion was approved as four out of five members approved the motion.

The landscape plan was discussed and Mr. Jonathan Kanipe said there would be 20% lot disturbance. They are also at 12.5% impervious so they are under the threshold.

Ms. Barnes asked how many trees would be removed for this project. Mr. Kanipe said there are 12 being removed but there are 49 being replaced.

Ms. Barnes moved that the landscape plan for 24 Busbee Road for Thomas and Theresa Davis be accepted. Ms. Lynn Kieffer seconded the motion. Chairman Goosmann took roll call. Ms. Rhoda Groce voted aye, Mr. Robert Chandler voted aye, Ms. Martha Barnes voted aye, Ms. Lynn Kieffer voted aye, and Mr. Lowell Pearlman voted aye. The landscaping plan passed unanimously.

Chairman Goosmann adjourned the meeting at 5:08 pm. The next Board of Adjustment meeting is scheduled for Monday, February 22, 2021 at 4:00 pm.

ATTEST:



Greg Goosmann
Chairman



Laura Jacobs
Town Clerk