

MINUTES OF THE BOARD OF ADJUSTMENT MEETING
HELD MONDAY, MARCH 15, 2021

The Board of Adjustment met at 4:00 p.m. on Monday, March 15, 2021. The meeting was held virtually via Zoom.

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

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. Chuck Hutchinson
Mr. Reginald Grant
Mr. Will McCrary
Mr. Cass Fowler
Mr. Paul Dismukes

A motion was made by Ms. Lynn Kieffer to approve the minutes from February 22, 2021. Ms. Rhoda Groce seconded the motion. Roll call was taken by Chairman Goosmann and the minutes were unanimously approved.

HEARING (Evidentiary):

A Special Use Permit was requested at 9 Hilltop Road for the installation of rooftop-mounted solar panels. Ms. Rhoda Groce shepherded the matter. This will have a battery backup system. Mr. McCrary said the neighbors have not opposed to the project. Mr. Trip McCrary said the panels will not be angled and will be flat and congruent with the roof. The panels are non-reflective and are matte.

DELIBERATION AND DETERMINATION:

Ms. Groce recited the facts and said Mr. William McCrary of 9 Hilltop Road is requesting a Special Use Permit for 32 mounted solar panels on the residence. These will be black, matte, and mounted flush on the roof. There were no additional questions or comments.

Mr. Lowell Pearlman moved that a Special Use Permit be granted to Mr. William McCrary of 9 Hilltop Road for a roof-mounted solar system and the facts as recited 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 the Board define 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.

HEARING (Evidentiary):

The next matter was for a Special Use Permit and Variance request for installation of fencing along the rear property line at 296 Vanderbilt Road. The matter was shepherded by Mr. Lowell Pearlman. It will be a six-foot tall wood fence across the back of the property. There is currently a fence at the location that is falling apart. They would like to fix it up and put in a solid wood, six-foot tall fence. There was a row of Cedar trees since the 1940's and the old fence is collapsing. The new fence will run along the rear property line. Mr. Grant said during the latter part of the summer, Ms. Grant saw people crossing over the fence and they had lights installed with infrared readers to act as security. They would like to straighten out the look and security. Mr. Pearlman asked Mr. Grant what

the hardship is for the Variance requirement. Mr. Pearlman verified there is uncontrolled access to and from Mr. Grant's yard and the commercial lot behind Mr. Grant's house.

Mr. Billy Clarke said the Ordinance specifically involves fencing for those along Hendersonville Road and adjacent to the Blue Ridge Parkway and the Biltmore Estate. The hardship requested was for safety and general welfare.

DELIBERATION AND DETERMINATION:

Mr. Reginald Grant of 296 Vanderbilt Road is requesting a Special Use Permit for a six-foot tall wooden fence along the rear property line to replace an old fence that is not on his property but abuts it. The hardship is there is unlimited access to his property from commercial property and public thoroughfares. Ms. Kieffer said it is not a replacement fence. Chairman Goosmann asked Mr. Grant how far into the property the fence will be. Mr. Grant said they have to go pretty much at the rear edge of the property or four inches in. Mr. Grant said they do not have a lot of room to work with. The trees are on the Grant's side of the fence.

Mr. Pearlman said some trees were marked on the Grant's property and wanted to verify these are being removed as part of the project. Mr. Kanipe said the tree removal is a separate issue and not part of this. The Town arborist will look at these later to discuss the possibility of removal.

Ms. Lynn Kieffer made a motion to grant a Special Use Permit to add a fence in the rear yard and a Variance to exceed the fence height maximum per the Town's regulations. 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 the Board define 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.

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. Rhoda Groce seconded the motion. Roll call was taken and unanimously approved.

HEARING (Evidentiary):

The final matter was for a Special Use Permit and Variance Request for Temporary Installation of Front Yard Fencing (Continued from the June 2020 Meeting) at 8 Westwood Road. The matter was shepherded by Ms. Martha Barnes. The homeowner is applying to extend this temporary fence until December 31, 2021. Mr. Billy Clarke said the request was initially submitted in June of 2020 to allow the temporary fence in the backyard and to allow it until the end of 2021. Mr. Hutchinson said he pulled the request back in June and said if he presented to the Board again today, he would withdrawal it again. Mr. Clarke said what Mr. Hutchinson is asking for today is different from what he is asking for in June of 2020. Mr. Clarke said Mr. Hutchinson is requesting permission to leave the temporary fence in the front yard until the end of 2021. Mr. Hutchinson had the temporary fence professionally done, is all black, and was installed behind plant materials that already existed. This fence is still currently up and Mr. Hutchinson would like to continue to remain in its current place until December 2021.

Ms. Barnes asked Mr. Hutchinson if there are any concerns from the neighbors regarding this temporary fence. Dr. Cas Fowler said he lives across the street and doesn't notice the fence. Mr.

Fowler said he notices Mr. Hutchinson's beautiful garden. Mr. Fowler is in support of the fence being there.

Mr. Hutchinson said part of the reason he is asking for the extension until the end of the year is he wanted to submit photos of his garden to the Smithsonian Institute for the spring, summer, and fall seasons for the submission requirements.

Mr. Clarke asked Mr. Hutchinson if he had a black "hogwire" type fencing installed in June of 2020. Mr. Hutchinson said yes. Mr. Clarke asked Mr. Hutchinson when that fence was replaced. Mr. Hutchinson said it was at the end of June 2020. Mr. Clarke asked if Mr. Hutchinson spoke to the Board of Commissioners. Mr. Hutchinson said no. Mr. Hutchinson said when he does speak to the Board of Commissioners; it will be part of a bigger picture. Mr. Clarke also asked Mr. Hutchinson how long he has been working on the garden submission to the Smithsonian Institute. Mr. Hutchinson said he has been working on this for eleven years. Mr. Hutchinson said he started taking pictures late last fall. Mr. Hutchinson said tomorrow he would start putting together a strategy about seeking permission to have the existing ordinance modified.

Mr. Paul Dismukes said he had no objection to the temporary fence.

DELIBERATION AND DETERMINATION:

Ms. Barnes recited the facts stating Mr. Chuck Hutchinson at 8 Westwood Road is requesting a Special Use Permit for a temporary fence and a Variance for a temporary fence in the front yard. Mr. Hutchinson's practical difficulty or unnecessary hardship is that he is trying to get the Smithsonian Institute certification for his garden and he needs to keep the fence in order to keep the deer out. Mr. Hutchinson is requesting to keep the temporary fence up until December 31, 2021. Mr. Hutchinson already has existing screening. Mr. Robert Chandler asked Mr. Clarke if the Board is meeting the requirements for this project. Mr. Clarke said yes as long as it is temporary and a date that is certain.

Ms. Rhoda Groce moved that a Special Use Permit be granted to Mr. Chuck Hutchinson of 8 Westwood Road for a fence in the front yard and the facts as recited by Martha Barnes 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. Ms. Groce further moved the Board define 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.

Ms. Groce 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.

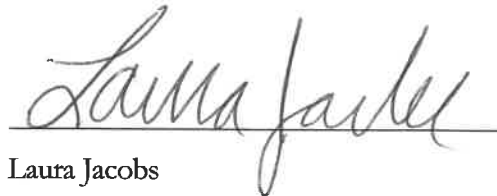
Ms. Lynn Kieffer seconded the motion. Roll call was taken and the motion was unanimously approved.

Chairman Goosmann adjourned the meeting at 4:51 pm. The next Board of Adjustment meeting is scheduled for Monday, April 19, 2021 at 4:00 pm.

ATTEST:



Greg Goosmann
Chairman



Laura Jacobs
Town Clerk