

MINUTES OF THE BOARD OF ADJUSTMENT MEETING
HELD MONDAY, MAY 17, 2021

The Board of Adjustment met at 4:00 p.m. on Monday, May 17, 2021. The meeting was held virtually via Zoom, with members of the Board of Adjustment in attendance at the Town Hall.

Members present: Mr. Greg Goosmann, Ms. Rhoda Groce, Mr. Robert Chandler (via Zoom), Ms. Lynn Kieffer, and Mr. Lowell Pearlman. Ms. Martha Barnes, alternate member. Mr. Jonathan Kanipe, Town Manager, were also present. Mr. William Clarke, Town Attorney was 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. Guy Wrenn
Ms. Laura Werner
Mr. Robert Stephenson
Ms. Merry Stephenson
Mr. Peter Ong
Mr. Bruce Johnson
Mr. Raymond Russell
Mrs. Elizabeth Russell

A motion was made by Ms. Rhoda Groce to approve the minutes, as revised, from April 19, 2021. Mr. Lowell Pearlman seconded the motion. Roll call was taken by Chairman Goosmann and the minutes as revised were unanimously approved.

HEARING (Evidentiary):

A Special Use Permit was requested for a playground structure in the rear yard at 10 Stuyvesant Crescent. Mr. Robert Chandler shepherded the matter. Mr. Guy Wrenn said the ground will be leveled and mulch put down. The play set is 10 feet high and 20 feet long with two swings on it. It looks like a traditional swing set. A picture was shown to the Board. Mr. Chandler asked if Mr. Wrenn would be willing to buffer if needed. Mr. Wrenn said yes.

DELIBERATION AND DETERMINATION:

Mr. Chandler recited the facts and said a Special Use Permit is being applied for by Mr. Guy Wrenn of 10 Stuyvesant Crescent for a swing set in the rear yard. The swing set is within the setback and is 10 feet high and 20 feet long. Mr. Wrenn is willing to buffer if needed.

Mr. Lowell Pearlman moved that a Special Use Permit be granted to Mr. Guy Wrenn of 10 Stuyvesant Crescent for a playground and 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. 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.

Ms. Rhoda Groce seconded the motion. Roll call was taken by Chairman Goosmann and unanimously approved.

HEARING (Evidentiary):

The next matter was a request for a Special Use Permit for a fence within the rear yard and low retaining wall extension within the side and rear yard at 2 Hemlock Road. Ms. Lynn Kieffer shepherded the matter. Ms. Laura Werner said they are putting in a four-foot wall along the side and back of their property with a fence and gate on either side. The wall will be partially retaining because some of the property will be leveled out. The neighbors will only see part of the wall. It is all within the setback limits. The wall will be the same type of material as the other walls. The fencing will look similar to the balcony railing they have on the property currently. The reason for this wall is to control some of the water runoff as well. The current runoff is eroding.

DELIBERATION AND DETERMINATION:

Mr. Lowell Pearlman recited the facts and moved that a Special Use Permit be granted to Laura Werner and John Brackett 2 Hemlock Road and the facts as recited by Lynn Kieffer 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.

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

HEARING (Evidentiary):

The next matter was for a Special Use Permit for a swimming pool within the rear yard at 341 Vanderbilt Road. Mr. Lowell Pearlman shepherded the matter. There will be leveling on the land in the back. There will be a retaining wall and the pool will be rectangular. The patio will be blue stone. The fireplace will be a natural stone. Mr. Pearlman asked if there would be any overhead lighting. Mr. Stephenson said no, just the lighting in the pool. The entire yard is already fenced in. The one fence to the North of the yard will be switched to a higher fence, which would be five or six feet tall with magnetic locks per state code.

DELIBERATION AND DETERMINATION:

Mr. Pearlman recited the facts and said Mr. Robert Stephenson and Mrs. Merry Stephenson of 341 Vanderbilt are requesting a Special Use Permit for swimming pool installation and for an outdoor fireplace and low wall in their rear yard. The property is properly screened and fenced in around the exterior. There will be no light intrusion for the neighbors. There were no addition to the facts.

Ms. Lynn Kieffer moved that a Special Use Permit be granted to Mr. Robert Stephenson and Mrs. Merry Stephenson of 341 Vanderbilt Road for a swimming pool, outdoor fireplace, and low retaining wall, and the facts as recited by Mr. 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. Martha Barnes seconded the motion. Roll call was taken by Chairman Goosmann and unanimously approved.

HEARING (Evidentiary):

The next matter was a request for a Special Use Permit request for a replacement fence within the rear yard setback at 300 Vanderbilt Road. Ms. Rhoda Groce shepherded the matter. Mr. Peter Ong said they want to replace an existing fence. They want to stop entry onto their property from the commercial side along Hendersonville Road upon which they back up. Mr. Ong's neighbor, Mr. Grant, has the same problem and he is fixing the issue as well.

DELIBERATION AND DETERMINATION:

Ms. Groce recited the facts and said Mr. Peter and Mrs. Marilyn Ong of 300 Vanderbilt Road are requesting a Special Use Permit for an accessory structure fence in the rear yard.

Mr. Billy Clarke added that as far as safety and security are concerned, several people have entered the Ong's property. Ms. Groce stated it is a replacement fence with the one that already exists. Chairman Goosmann said this would limit commercial traffic from the back of their property. It will also protect from the bears that enter the property.

Ms. Martha Barnes made a motion and moved that Mr. Peter and Mrs. Marilyn Ong of 300 Vanderbilt Road be granted a Special Use Permit for a replacement fence within the rear yard setback and the facts as recited by Ms. 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. Ms. Barnes 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.

Mr. Lowell Pearlman seconded the motion. Roll call was taken and unanimously approved.

HEARING (Evidentiary):

The next request was for a Variance request to exceed maximum roof coverage for an accessory building and a Special Use Request for an Accessory Building at 63 Forest Road. The matter was shepherded by Ms. Martha Barnes. Mr. Bruce Johnson, architect for the applicant, said this is for a small guest cottage for Ms. Morgan. It will be less than 1,000 square feet and will be a 1.5 story guesthouse on the rear of her property. It meets all requirements except the maximum roof coverage allowance of 750 square feet for accessory buildings. Ms. Morgan requests the additional 44 square feet due to having appropriate overhangs on the building and resolving drainage issues. In addition, they are trying to make sure there is an edge on the roof where the water comes off the roof appropriately and the water goes off into the gulley appropriately. The 44 feet would be almost all roof overhang. The total square footage would be 5,294 square feet with both the house and guesthouse which is well under the total allowable maximum roof coverage for the whole lot.

Ms. Barnes asked about the vegetation and buffering. Mr. Johnson said Ms. Morgan's site is heavily wooded and it would be built close to the rear setback. The existing vegetation will all remain except for three trees that will be removed. The new cottage will be fiber cement siding which will match the main house. The closest neighbors, the Stricklands, had no issue with this project.

DELIBERATION AND DETERMINATION:

Ms. Barnes restated the facts and said Ms. Rebecca Morgan of 63 Forest Road is requesting a Special Use Permit for an accessory building and for a Variance because the roof coverage of the accessory building exceeds the 750-foot ordinance by 44 feet. The roof coverage of the house and cottage are well under the maximum coverage that is allowed on the property. The new building is secluded and the neighbors do not have any issue with the project. It cannot be visible from the road. The building material will be in line with the existing house. The hardship is the roof overhang needs to be taken into account for proper water drainage. It would be an additional one-foot overhang.

Ms. Rhoda Groce moved that a Variance as requested be granted to Ms. Rebecca Morgan of 63 Forest Road 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.

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

HEARING (Evidentiary):

The final matter was for a variance request for re-construction of a storage shed within the side yard setback at 307 Vanderbilt Road. The matter was shepherded by Mr. Robert Chandler. Mrs. Russell asked if they can withdraw before a vote but after the Board discusses the matter. Chairman Goosmann said yes. Mr. Russell said there was a prior shed there for 28 years. Since the last hearing, the residents at 309 Vanderbilt put up an eight-foot fence along the property line and the edge of the present shed would be part of the property line addition to the fence. When they had a hearing in January, Mr. Russell recalled the only problem being the prior easement and whether it allowed for the construction of the new shed. Mr. Russell said they could either get an extension of the easement or move the wall back onto the property line. Mr. Russell said the neighbor's at 309 Vanderbilt agreed to the property line shed being on the property line.

Mr. Clarke clarified and said what was on the agenda for the Board of Adjustment meeting in January 2021 was a request to replace an existing shed. At that time, an issue was identified to the Board where a portion of the shed encroached on the neighbor. The Board could not approve replacing an existing shed on someone else's property so the Board asked Mr. Clarke to look at the easement that was in place. Mr. Clarke's determination was the easement that was in place only allowed for the encroachment of the existing shed and would not allow any encroachment of a new structure. The Board never actually approved anything in January so this will be treated as a new application. This current application is to replace an existing shed and none of the new shed will encroach on the property of 309 Vanderbilt Road.

Mr. Pearlman said it would be difficult for the Board to approve the "new shed" because of the various issues. There could be a problem approving it. Mr. Russell said they will withdraw their request.

Chairman Goosmann adjourned the meeting at 4:38 pm. The next Board of Adjustment meeting is scheduled for Monday, June 17, 2021 at 4:00 pm.

ATTEST:



Greg Goosmann

Chairman



Laura Jacobs

Town Clerk