

MINUTES OF THE BOARD OF ADJUSTMENT MEETING
HELD MONDAY, JULY 26, 2021

The Board of Adjustment met at 4:00 p.m. on Monday, July 26, 2021.

Members present: Mr. Greg Goosmann, Ms. Rhoda Groce, Mr. Robert Chandler, Mr. Lowell Pearlman, Ms. Lynn Kieffer, and Ms. Martha Barnes. Mr. Jonathan Kanipe, Town Manager, Town Clerk, Ms. Laura Jacobs, and Director of Public Works, Mr. Harry Buckner, were all 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. Drew Stephens

Ms. Angela Newnam

Mr. Clay Mooney

Mr. Michael Cain

Mr. Matt Baker

Mr. Ben Lehman

Dr. Doug Phillips

Mr. Robert Dull

A motion was made by Mr. Robert Chandler to approve the minutes from June 21, 2021. Ms. Lynn Kieffer seconded the motion. The minutes were unanimously approved.

HEARING (Evidentiary):

A Variance is requested for 1 Ridgefield Place for dimensional requirements. Ms. Rhoda Groce shepherded the matter. Mr. Drew Stephens said the lot is 1.14 acres, and the original lot was

0.42 acres. These parcels were combined before Mr. Stephens bought the property. It is maintained as a separate area from the parcel abutting Eastwood Road. Mr. Stephens provided the Board a survey he had performed in regards to the project. If approved, the division of this 1.14 acre parcel would restore the two lots to their original zoning and original lot sizes.

DELIBERATION AND DETERMINATION:

Mr. Kanipe said it does not count as a subdivision because there is a specific exception identified in the Town's Subdivision Ordinance. The single parcel is currently split zoned, which poses a problem in terms of determining zoning allowances on the property. The division would be handled administratively if the dimensional requirements for the lots were met. The dimensional requirements associated with restoring the original lots and appropriate zoning require the Board to grant a variance before the division may proceed.

Ms. Rhoda Groce restated the facts and said Mr. Drew Stephens of 1 Ridgefield Place is applying for a Variance for dimensional requirements. Town Attorney, Mr. Clarke said he approved this matter. Ms. Lynn Kieffer made a motion to approve the Variance and that it be granted to Mr. Drew Stephens, 1 Ridgefield Place. 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. Lowell Pearlman seconded the motion. The motion was approved unanimously.

HEARING (Evidentiary):

The next matter was a request for a preliminary landscaping plan, grading plan, and tree removal/replacement approval at 31 Stuyvesant Road, which is the Biltmore Forest Country Club. Mr. Robert Chandler shepherded the matter. Mr. Clay Mooney represented the project for the Country Club. Mr. Mooney said 29 trees will need to be removed and 97 trees will be replanted. Rerouting of water and utility lines and grading has been tightened up. The tennis court will be shifted and there will be a new pool and fitness facility. Mr. Mooney also discussed the landscaping plan.

Ms. Angela Newnam asked how many canopy large oaks are being taken down. Mr. Mooney said there are seventeen total being taken down. Mike Cain with Civil Design Concepts indicated the original fieldwork and tree identification was to show the community the potential extent of removal. The landscaping plan provided to the Board shows trees that will be removed marked with black dots.

Mr. Pearlman asked why Mr. Mooney chose specific species as opposed to hardwoods. Mr. Mooney said presently there is a black locust hanging across the tennis court, which is creating a maintenance nightmare. In addition, planting oaks or hardwoods results in many leaves and a nightmare for users of tennis courts.

Ms. Newnam expressed her disinterest in crepe myrtle trees and would like to see more traditional trees such as Japanese maple trees being planted around the entrance.

Mr. Kanipe said the Board is being tasked with looking at the landscape plan as well as the site plan. There is still a fire connection line issue and that is still currently being looked at. Mr. Matt Baker seconded the comment Ms. Newnam made about the crepe myrtle trees.

DELIBERATION AND DETERMINATION:

Mr. Chandler restated the facts and said the Biltmore Forest Country Club at 31 Stuyvesant Road is asking for renovations and removal of 29 trees. Eighty-four trees are required for replanting, and the proposal says 97 trees will be replaced. Town staff has shown the requirements have been met.

Mr. Pearlman moved that a preliminary plan be accepted. Ms. Rhoda Groce seconded the motion. The motion was approved unanimously.

HEARING (Evidentiary):

The next matter was an appeal from Mr. Ben Lehman regarding a soccer goal in the rear yard as an accessory structure at 9 Holly Hill Road. Ms. Martha Barnes shepherded the matter. Mr. Kanipe said the Town contacted Mr. Lehman in May 2021 and informed him there was never an accessory structure permit. Mr. Lehman had spoken with Ms. Adrienne Isenhower via email in 2019. This email referenced a soccer goal on a site plan, but there was never a description or dimensions provided. Ms. Isenhower's initial email related to the changing of the lawn to artificial turf.

Mr. Kanipe said they also talked about the fencing around the pool in May of 2018 that was approved. Ms. Isenhower did not ask what the size of the soccer goal was. Mr. Kanipe's interpretation is that the large size of the soccer goal renders it an accessory structure. Fences, walls, rocks are a few examples of an accessory structure. These accessory structures all require a Special Use Permit. Mr. Kanipe consulted with Mr. Billy Clarke who agreed this goal needed Board of Adjustment approval. Mr. Clarke said the two questions for the Board to keep in mind are as follows: is this an accessory structure, and second, does the Board wish to issue a special use permit for the soccer goal?

Mr. Lehman said he communicated thoroughly with Ms. Isenhower about having a soccer goal. Mr. Lehman said they are planning to do more plantings in the front. Mr. Lehman said the ordinances are not very clear regarding an accessory structure and there needs to be a better system. Mr. Lehman said he is being singled out for an 8'x24' soccer goal and that should be clearly addressed in the Ordinances. Mr. Lehman mentioned the people in the Town that have basketball hoops set in concrete in their front yard and whether they need to have a permit for this. Mr. Lehman feels there needs to be a better system.

Ms. Kieffer said the Board is determining if this is an accessory structure. Mr. Pearlman discussed buffering.

Ms. Charlene Price commented on Mr. Lehman's project. Ms. Price resides at 11 Holly Hill. Ms. Price objected to Mr. Lehman's Special Use request and said there has been unauthorized disruption of Mr. Lehman's property since they moved in. Ms. Price said this project should have been monitored and she thinks the standards set in place must be protected. Ms. Price also said there is not adequate landscaping and is highly visible from the street and neighboring property owners.

Ms. Price referenced an email from a neighboring property owner, Ms. Andrea Eglinton, who expressed concern about Mr. Lehman's project and wanted to know where the water from the pipes are going since the pipes are covered with turf. Ms. Price said she wants the soccer goals and artificial turf removed.

Ms. Nichole Baker who is a property owner on Holly Hill Road also objected to Mr. Lehman's project. Ms. Baker also requested a time line for completion. Mr. Kanipe said regarding landscaping, it needs to be installed within six months. For construction, work must begin within six months of permit issuance. The work must finish within two years of starting.

DELIBERATION AND DETERMINATION:

Each Board member present determined the soccer goal to be an accessory structure. Mr. Lehman indicated he will return next month with a landscaping plan and Special Use Permit.

HEARING (Evidentiary):

The next matter was a request for a Special Use Permit request for existing planned unit development driveway access improvements at 1095 Hendersonville Road. Mr. Clay Mooney represented Dr. Doug Phillips. Mr. Pearlman mentioned the actual property address is 1095 Hendersonville Road. Mr. Mooney said there should be a safer ingress and egress primarily for traffic exiting south on Hendersonville Road. The project consists of removing concrete paving and gutter work. There will be a reduction in impervious surface coverage. Dr. Phillips said it is dangerous leaving Hendersonville Road. Dr. Phillips supports this project.

DELIBERATION AND DETERMINATION:

Mr. Lowell Pearlman recited the facts. A hard surface adjoining 1095 Hendersonville Road and 1111 Hendersonville will expedite safety of ingress and egress. Mr. Clay Mooney represents Dr. Duncan Dorris of 1095 Hendersonville Road and Dr. Phillips represents 1111 Hendersonville Road.

Ms. Martha Barnes moved that a Special Use Permit as requested be granted to Dr. Duncan Dorris at 1095 Hendersonville Road for improved driveway access between 1095 Hendersonville Road and 1111 Hendersonville Road 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. 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. Chandler seconded and the motion was unanimously approved. Mr. Chandler disclosed he was a patient of Dr. Phillips. The project was approved.

HEARING (Evidentiary):

The next request was for a Special Use Permit for revisions to a previously approved plan for a driveway entrance at 23 Eastwood Road. Mr. Robert Dull represented the homeowners. Mr. Dull was from Site Work Studios. The driveway square footage is going to be reduced. Martha Barnes asked about the replacement trees. Mr. Dull said they are still working on the landscape plan. There were no further additions to the facts.

DELIBERATION AND DETERMINATION:


Ms. Kieffer restated the facts and said Mr. Rob Dull is working with Bob and Char Hand who are the owners at 23 Eastwood. The driveway will be reducing impervious surface coverage and changing the driveway to a circular driveway.

Ms. Rhoda Groce moved that a Special Use Permit be granted to Mr. Bob and Mrs. Char Hand of 23 Eastwood Road and the facts as recited by Ms. 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. 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. Barnes seconded the motion. The motion was unanimously approved.

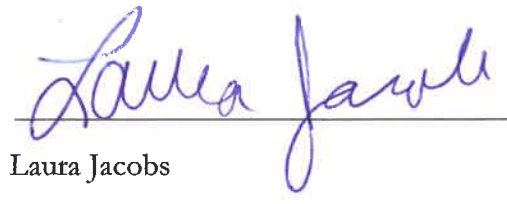
Chairman Goosmann adjourned the meeting at 6:17 pm. The next Board of Adjustment meeting is scheduled for Monday, August 30, 2021 at 4:00 pm.

ATTEST:



A handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke at the end, positioned above a horizontal line.

Greg Goosmann
Chairman



A handwritten signature in blue ink, written in a cursive style, positioned above a horizontal line.

Laura Jacobs
Town Clerk