

MINUTES OF THE BOARD OF ADJUSTMENT MEETING
HELD MONDAY, AUGUST 30, 2021

The Board of Adjustment met at 4:00 p.m. on Monday, August 30, 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, Town Clerk, and Director of Public Works, Mr. Harry Buckner, were all present. Mr. William Clarke, Town Attorney was also present.

Chairman Greg Goosmann called the meeting to order at 4:07 p.m.

Mr. Goosmann swore in the following:

Mr. Art Kiser
Mr. Jonathan Kanipe
Mr. George Stowe
Mr. John Kimberly
Ms. Liz Kimberly
Mr. James Clayton
Mr. Miles Elmore
Ms. Millie Elmore
Mr. Harry Buckner
Mr. Ben Lehman
Mr. Matt Baker
Ms. Nicole Baker
Ms. Charlene Price

A motion was made by Mr. Robert Chandler to approve the minutes from July 26, 2021. Ms. Lynn Kieffer seconded the motion. The minutes were unanimously approved.

HEARING (Evidentiary):

A Special Use Permit was requested for an addition of a circular drive at 8 White Oak Road. Mr. Lowell Pearlman shepherded the matter. Mr. George Stowe represented the homeowners. The circular drive will have an off-street parking area, which will help tremendously and accommodate three vehicles adjacent to the front door. The impervious surface has not been exceeded.

DELIBERATION AND DETERMINATION:

Mr. Pearlman recited the facts. A Special Use Permit is being requested for a circular drive. The impervious surface will not be exceeded. The trees will be removed due to the placement of the driveway. The neighbor to the north had no objection to the project.

Ms. Rhoda Groce made a motion and moved that John and Liz Kimberly be granted a Special Use Permit for a circular drive 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. 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.

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Ms. Martha Barnes seconded the motion. The motion was unanimously approved.

HEARING (Evidentiary):

A Special Use Permit is requested for an addition of a circular drive and parking area in the rear of the home at 5 White Oak Road. Mr. James Clayton spoke about the matter. The Town's impervious surface coverage requirements are met. Ms. Barnes asked if the applicant would be willing to buffer due to the increased hardscaping being added to the property. Mr. Clayton said yes and he would talk to the landscape architect regarding this.

DELIBERATION AND DETERMINATION:

Mr. Robert Chandler recited the facts and said that the driveway will be expanded and will be a circular drive with a Y-shape going into the back. It will connect to an existing drive by the garage. The total impervious surface coverage is 5,000 square feet. It will consist of 24.5% of the lot. The plan complies with all the setbacks. There is also plans for further landscaping and buffering if needed.

Ms. Lynn Kieffer made a motion to grant a Special Use Permit to Mr. James Clayton of 5 White Oak Road and the facts as recited by Mr. 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 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. The motion was unanimously approved.

HEARING (Evidentiary):

A Special Use Permit is requested for a rear yard fence installation and variance request for rear and side yard setback encroachment at 6 Stuyvesant Road. Ms. Rhoda Groce shepherded the matter. Dr. Elmore said they are overrun by deer and Asheville Fence would construct the fence. It is metal and black. It would only be in the back yard. None of the neighbors objected to the project. It would be set five feet from the property line on each side. This fence would keep the deer out and allow additional buffering to the neighbors. The fence requested complies with the portion of the ordinance relating to materials and height.

DELIBERATION AND DETERMINATION:

Ms. Rhoda Groce recited the facts and said Dr. Miles and Ms. Millie Elmore are requesting a Special Use Permit at 6 Stuyvesant Road for a rear yard fence. The fencing will stand eight feet tall. It will include two gates. A variance has also been requested for encroachment into the rear and side yard setback.

Mr. Pearlman made a motion to approve a Special Use Permit for 6 Stuyvesant Road for a fence 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.

Mr. Pearlman 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.

HEARING (Evidentiary):

The next matter is for a variance request for a side yard setback encroachment for a carport addition to an existing detached garage at 377 Vanderbilt Road. Mr. Art Kiser reviewed the proposal for the carport addition to the existing 1928 garage. Mr. Kiser also would like to add a fence to the back of the garage to replicate what is already existing. Mr. Kiser said the fence would not be visible from the road. The carport would encroach on the easement. The neighbors on each side of the project, Mr. Domby and Dr. Ledford, approved of Mr. Kiser's project. The materials would be compatible with the house.

DELIBERATION AND DETERMINATION:

Ms. Kieffer recited the facts. A Variance for a fence that will encroach into the side yard setback and a Special Use Permit for a carport to encroach on the side yard setback.

Mr. Robert Chandler moved that a Special Use Permit as requested be granted to Mr. Art Kiser and Ms. Penny Kiser at 377 Vanderbilt 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. Chandler 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 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.

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

HEARING (Evidentiary):

The final matter was for a Special Use Permit request for an existing soccer goal installation within the rear yard and landscaping plan review at 9 Holly Hill Road. Ms. Martha Barnes shepherded the matter. Mr. Ben Lehman went over the plans with the Board. Landscaping was installed previously and Mr. Lehman showed the Board the type of shrubbery that will be installed in the future. This landscaping will be along the property line with Ms. Price. Chairman Goosmann asked Mr. Lehman for his plans to soften the area around the soccer goal installation and asked for him to go over the landscaping plan. Mr. Lehman said existing boxwoods are in place. There will be a crepe myrtle and a row of forsythia, which are 5-10 feet tall. Behind the forsythia, additional buffering will be planted that will grow to approximately 10 feet high. There will also be various trees planted as described in the plan that will grow rapidly. Mr. Lehman would like to leave the existing hemlock trees and will add a row of holly trees. Bamboo trees will be planted near the existing boxwoods. It will be a continuous, dense planting.

Mr. Chandler asked if Mr. Lehman's intention was to buffer the side of the goal so the neighbor will not see it. Mr. Lehman said yes. Mr. Chandler said if Mr. Lehman plants in the front, it should take care of a lot of the much needed buffering.

Mr. Pearlman asked about the period on completing the landscaping plan. Mr. Lehman said he is committed to get this landscaping plan done.

Ms. Barnes asked Mr. Lehman about the bamboo. Mr. Lehman said it is not a spreading bamboo, it is a clumping bamboo. Ms. Barnes said bamboo does spread 4-6 feet per year. Ms. Barnes asked about the water runoff in the front. Mr. Lehman said there is a catch basin that exists. Ms. Barnes about the drainage exit in the back. Mr. Lehman said there is a permeable drain in the back and explained to the board how it flows. There is a channel drain to catch the water that would run down the driveway.

Ms. Kieffer said there is a hedge in the front that runs in between the drive. This allows increased visibility on Holly Hill. Ms. Kieffer that said that hedge is sparse and maybe a second layer of buffering could be possible since it is so visible. Mr. Lehman agreed to add additional buffering in the current landscape plan to fill in the sparse area.

Ms. Barnes said there should be screening on the driveway as well. Ms. Barnes suggested putting copper pots or some type of potted plants in this area. Mr. Lehman said he would eventually like to put a fence in this area.

Ms. Groce said the vegetation around the lot needs to be much more mature and heavier buffering is needed. Ms. Barnes said a Special Use Permit could be approved with the certain conditions the Board is proposing. Ms. Barnes said the neighbors are very concerned with the project. Chairman Goosmann said the Board is trying to find a way to help Mr. Lehman with his project. Mr. Clarke said the Board is allowed to approve with conditions for the project.

Mr. Pearlman suggested a conceptualized computer plan showing before and after landscaping plans may be beneficial for all.

Ms. Kieffer described the sparse areas and the needed fillers to further buffer that area.

Nicole Baker, a neighboring property owner, is very concerned about the buffering when one drives down the street going toward the cul-de-sac. Ms. Baker is also concerned about the timing of this project and does not appreciate the turf of the soccer field. She does not feel the soccer area could be buffered enough to where it would not be a detriment to the street.

Ms. Charlene Price, a neighboring property owner is also very concerned about Mr. Lehman's property. Ms. Price objects to the Special Use request. Ms. Price said the drainage has caused severe runoff and damage to neighboring property owners. Ms. Price does not approve of the AstroTurf and said AstroTurf is considered impervious. Ms. Price asked if Mr. Lehman surpasses the impervious surface coverage with the AstroTurf coverage. Mr. Jonathan Kanipe said Mr. Lehman is below the allowed amount. He would still have a remaining 4% of his lot, which would be allowed to be covered.

Ms. Price referred to a prior landscaping plan to which she did not believe Mr. Lehman adhered. Ms. Price wanted to know who would monitor the landscaping growth of Mr. Lehman's current landscaping plan. Mr. Kanipe said Mr. Mike Dale at the Public Works Department would be the one monitoring the landscaping. There is a six-month window to get the landscaping done. Ms. Price also said he could plant in the front of the driveway to buffer. Ms. Price emphasized she would like this soccer goal and AstroTurf removed. Ms. Price said Astroturf is not environmentally friendly. Ms. Price handed out a letter from Ann Skoglund, submitted to Ms. Price, stating the soccer field in Mr. Lehman's yard does not fit in with the community.

Mr. Clarke said what should be decided is whether to issue a Special Use Permit for the soccer goal. If so, what conditions need to be imposed? Mr. Clarke said the turf cannot be regulated but appreciated all the information from Ms. Price regarding this issue.

Mr. Matt Baker said the real concern is the overall structure and the drainage issues. Mr. Clarke said the drainage issues are not something the Town of Biltmore Forest can regulate. Mr. Baker said there is flooding in the back and the neighbors' are concerned. Mr. Baker said the original plans did not include Astroturf and the neighbors' have an opportunity to object. Mr. Baker wanted to find out how this matter was overlooked.

Mr. Clarke told Ms. Price the Board is not approving the turf and it is not deemed a permanent structure.

Mr. Baker said, when a plan is submitted to the Board of Adjustment, the neighbors can approve/disapprove the project and this plan should have went in front of the Board for neighbors to approve/disapprove. Mr. Baker said it was not presented as having AstroTurf.

Mr. Clarke said when a project is submitted, the Board does not consider what kind of grass is going to be put down.

Ms. Price requested the Astroturf be removed because it was not permitted.

Mr. Kanipe said the Astroturf was addressed as "lawn."

Ms. Price noted Mr. Lehman leaves his trash/recycling containers out and it looks unsightly.

Ms. Kieffer said the landscaping plan presented three years ago does not include the fence. Ms. Kieffer feels uncertain whether the landscaping plan will be fulfilled.

Mr. Lehman made a decision to table the matter for one month.

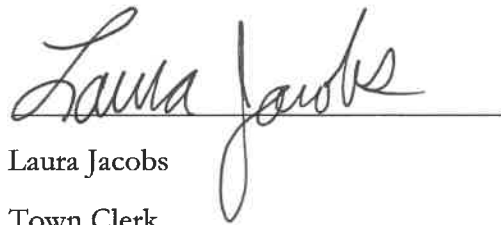
Chairman Goosmann adjourned the meeting at 6:02 pm. The next Board of Adjustment meeting is scheduled for Monday, September 20, 2021 at 4:00 pm.

ATTEST:



Greg Goosmann

Chairman



Laura Jacobs

Town Clerk