

MINUTES OF THE BOARD OF ADJUSTMENT MEETING
HELD MONDAY, DECEMBER 20, 2021

The Board of Adjustment met at 4:00 p.m. on Monday, December 20, 2021.

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

Ms. Mary Hiers

Mr. David Sandridge

Ms. Celeste Sandridge

Ms. Karla Diamond

Mr. Andrew Franklin

Ms. Karen Franklin

Ms. Charlene Price

Mr. William Swords

Mr. Matt Baker

Mr. Ben Lehman

A motion was made by Mr. Robert Chandler to approve the minutes from November 15, 2021. Ms. Lynn Kieffer seconded the motion. The minutes were unanimously approved.

HEARING (Evidentiary):

A Special Use Permit was requested for an outside fireplace and patio covering at 23 Amherst Road. Mr. Lowell Pearlman shepherded the matter. Ms. Mary Hiers represented the homeowners and said they are applying for a patio with a covering. It will be an attractive addition to the home. It will be a blue stone patio with a built in fireplace to the side. There will also be a place for grilling. It will have a shed roof. Mr. Pearlman asked Mr. Sandridge if he spoke to the neighbors about that project. Mr. Sandridge said no, but assumed they would be ok with the project. Approximately 10-15 trees will be added for additional buffering. Additional buffering will be added if requested by neighboring property owners.

DELIBERATION AND DETERMINATION:

Mr. Pearlman restated the facts and said David and Celeste Sandridge are applying for a Special Use Permit for an outside fireplace and patio covering. It will not be a screened in patio. There will be 10-15 trees planted for screening purposes. It does not infringe on any setbacks. Additional screening will be provided if necessary.

Ms. Lynn Kieffer made a motion that a Special Use Permit be requested to David and Celeste Sandridge of 23 Amherst Road for construction of a side patio, roof covering, and outdoor kitchen 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 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 Variance request was submitted for retaining walls within the front yard setback and a Special Use Permit request for accessory structures at 10 Buena Vista Road. Ms. Karla Diamond elaborated on the project. Ms. Lynn Kieffer shepherded the matter. Ms. Diamond is requesting several retaining walls to assist with tree preservation. Ms. Diamond explained the location of the retaining walls. The retaining walls will be put in as a worst-case scenario after the work is done. They might not be needed. Chairman Goosmann asked Ms. Diamond if she would be willing to place additional buffering if requested by a neighboring property owner. Ms. Diamond said yes.

DELIBERATION AND DETERMINATION:

Ms. Lynn Kieffer restated the facts and said Ms. Diamond is requesting a Variance for retaining walls within the front yard setback and a Special Use Permit request for accessory structures. Additional buffering will be provided if needed.

Mr. Lowell Pearlman made a motion to grant a Special Use Permit and Variance to Preston and Karla Diamond at 10 Buena Vista Road for an accessory structure and a Variance for retaining walls 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.

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.

Ms. Rhoda Groce seconded the motion. The motion was unanimously approved.

HEARING (Evidentiary):

A Variance request for exceedance of a detached accessory building and maximum roof coverage and extend beyond the parallel to rear of the building and a Special Use Permit request for a detached accessory building at 11 Brookside Road. Mr. Andrew Franklin and Ms. Karen Franklin presented this project last month to the Board and provided revisions this month. Ms. Rhoda Groce shepherded the matter. Ms. Groce said now the current proposal is an accessory dwelling with a single car garage, which is 813 square feet of roof coverage. This is an overage of 8.4%. Ms. Barnes asked Mr. Franklin what the hardship is for the Variance. Mr. Franklin said part of the hardship is the topography of the lot. Mr. Franklin said less trees would have to be removed as well. Approximately five trees will need to be removed as opposed to 10-15 trees. Chairman Goosmann asked if Mr. Franklin spoke to the neighbors about the project. Mr. Franklin said yes, the neighbors are in favor of the project and have no objections.

DELIBERATION AND DETERMINATION:

Ms. Groce restated the facts and said Mr. Andrew Franklin and Ms. Karen Franklin are applying for a Variance at 11 Brookside Road of a detached accessory building, maximum roof coverage and expanded beyond the rear of the building. They are also requesting a Special Use Permit for a detached accessory building. This is for a garage and cottage for a family member.

Ms. Barnes made a motion and moved that a Special Use Permit and Variance be granted to Mr. Andrew Franklin and Ms. Karen Franklin of 11

Brookside Road 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. 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.

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

HEARING (Evidentiary):

The last matter was an appeal of a zoning determination regarding a turf field at 9 Holly Hill Road. Ms. Charlene Price provided a letter regarding a letter addressed to the Board regarding this case. Mr. Billy Clarke said this letter could

not be addressed at the meeting if the person who wrote the letter is not present at the meeting. Mr. Clarke said the Board would view the letter. Ms. Price said the letter is from Ms. Marcia Grant.

Mr. Clarke read the letter to the Board from Ms. Grant, which was dated December 20, 2021 and addressed to the Board of Adjustment and Board of Commissioners:

To Whom it May Concern,

We have lived on Holly Hill Rd. for 36 yrs. We like our neighbors and don't want to take sides with the soccer field saga. We raised our children on this street and are understanding of children and their need for a play area within their own property. We also empathize with the concerns of adjacent neighbors to the sights, runoff, and sounds that may be the result of those play areas.

We do have concerns though when it comes to safety and being in construction ourselves, are especially aware that the deck at 9 Holly Hill Rd. has been unfinished for probably over a year. Not only is there no railing for safety, there aren't even any deck boards over the joists. This would be a certain OSHA violation on a commercial construction site. Also, there is no fence around the pool area. We do appreciate though the removal of the shed and the construction trash from the visibility of the road which has occurred as a result of this process.

We have been made aware that the agenda for tonight's meeting lists me, Marcia Grant, as accepting of the trellis proposal. Let me be clear. I had an impromptu discussion with Ben Lehman one day while I was walking my dog. Ben said he had consulted with a professional landscaper who suggested a trellis on the top of the retaining wall as an option and asked me what I thought of it. I told him, I didn't really care what option he chose. After thinking about it later though, and discussing it with Rick, my husband, we did realize that a trellis may not be the best choice. In fairness to Ben, he was not made aware of this reconsideration, but I also didn't think he would take my off the cuff remark as validation. There was no mention of size, height, material, etc. If the objective is to screen the soccer goal from the street,

the height of the trellis would probably have to be over 6'. Because this trellis would be closer to the street than the goal, it would be more visible and potentially more offensive than the goal itself.

Another consideration would be the maintenance required if it is built out of a wood product. This would be a burden to the Lehmans as well as this Board to oversee and contend with for years to come. For the record, we would like to say that we would prefer a natural buffer, or at least a combination of trellis (4' high or less) and some plantings to soften the appearance. This may not completely screen the goal but at least it would distract the sight line to the goal.

Finally, the town administrators have the responsibility to grant variances and enforce ordinances without getting neighbors overly involved. We appreciate the fact that the Board is trying to reach a compromise, but the bottom line is the Board has to make a decision and time is of the essence. The longer this process continues, the more contentiousness grows. The Board's decision, while considering input from neighbors, should be made based on fact —

- *What is allowed?*
- *What was approved?*
- *Were the improvements inspected during and after construction?*
- *Were the improvements altered and if so, to what degree?*
- *Did the alterations substantially change the scope and intent of the project?*
- *Has precedence been created?*
- *Will precedence be set?*

Your decision should be made with consideration to what is best for all of Biltmore Forest, not just a portion of it and a few of its residents. Thank you for your considerations.

*Marcia and Rick Grant
12 Holly Hill Rd.*

Mr. Jesse Swords, representing Ms. Charlene Price, thanked the Board for having them back. Mr. Swords informed the Board Ms. Price has some background statements to make about the situation as a whole. Mr. Swords also told the Board he would have legal input as well. Ms. Price addressed the Board. Ms. Price said this will be the last time she appears in front of the Board and has prepared a statement of what has gone on for the past six months at 9 Holly Hill Road. Ms. Price said she is addressing three issues; Mr. Lehman's intent, the unpermitted goals and the appeal today, and Ms. Price's role as a resident of Biltmore Forest. Ms. Price addressed the following with the Board:

Biltmore Forest Board of Adjustments Town Manager Jonathan Kanipe, Town attorney Billy Clark, and all other town officials Good afternoon, happy holidays. I am testifying here today to go on the record with a prepared statement and review of facts concerning the ongoing property changes at 9 Holly Hill Road in Biltmore Forest. I will review three areas:

Mr. Lehman's intent:

The unpermitted goals and the appeal addressing the soccer field.

My role as a resident of Biltmore Forest and as one of your constituents

I received notice in July of a hearing for a special use permit for 9 Holly Hill Road. The issue was regarding the unpermitted and unauthorized installation of regulation size goals and nets located on a 4000-square foot artificial turf field and specific to this special use permit - the goals stand 8 feet high and 24 feet wide. This structure sits in Mr. Lehman's side yard not his rear yard This is important because Mr. Lehman refers to his rear yard in his many applications. When in fact this entire structure is completely visible from the street. There is a photo reference in your packet. At that meeting, neighbors and I submitted many reasons that supported our objection to the specialuse permit. Not only Specific to this structure but to the many ongoing projects on the property as well.

One important reason many neighbors, including me, objected to this special use permit is

that the best indicator of future behavior is past behavior.

Since 2016, when Mr. Lehman moved into the property at 9 Holly Hill Road, there has been ongoing construction and renovation to his property.

When moving into his property in 2016, Mr. Lehman failed to install the required fencing around the pool area in accordance with NC codes and safety requirements. When pressed, Mr. Lehman re-confirmed his commitment to install the required fencing as part of a separate 2018 renovation plan submitted to this board. The required fencing around the pool has not yet been completed

-five years after moving into his home, despite his commitment to complete the required fencing, and despite his including it in several proposals submitted to this board, and despite this board pressing him on this issue. Only when absolutely forced did Mr. Lehman start construction on the required fencing over these past few months.

Mr. Lehman built an unauthorized storage shed on his property (to the side and visible from the street) and did not secure proper permitting and approvals. This board required Mr. Lehman to relocate it to the back of his property.

The 2018 renovation plan he presented to this board stated a completion date of that same year. And while materials and supplies arrived immediately and have sat on his property on and off for the better part of three years, it is not yet finished. For example, the green construction wrap used on houses before brick or siding is installed is still on display on the rear of Mr. Lehman's home and within view of my property. There is a photo reference in your packet.

In addition, the deck and the steps have not been completed from the original plan from 2018. There is a photo reference in your packet. And just as important is that this incomplete renovation plan was changed substantially without approval or knowledge of the town or the BOA. Specifically, the BOA approved a fescue grass play area and a robust landscape design. Mr. Lehman instead installed a 4000-square-foot sub-base structure to which he attached artificial turf and an added an 8-foot-tall permanently installed goal. As well, Mr. Lehman committed in his 2018 proposal to more than 200 plantings to enhance his entire property.

When Mr. Lehman came to this board in 2021 to request a special use permit, none of the plantings that he committed to in 2018 had been installed. None.

Mr. Lehman's disregard for this town's policies and procedures is ongoing. There appears no effort on Mr. Lehman's part to comply with the covenants of this community and neighbors have no confidence that Mr. Lehman will follow through on his commitments in a timely or reasonable manner.

Mr. Lehman's past behavior, as well as the negative impact and environmental risks of the artificial soccer field brings me to this point.

I had never done anything like this before. In July, when I was alerted to the special use permit for the permanent soccer goal, I asked two different town officials if I could submit a letter of objection. Both recommended that a letter would not work as effectively as a sworn testimony and that a letter "will not be nearly as effective as you going in person." As well, one of the town officials shared with me, "you have the town's support, the town would like to see the artificial turf field go."

As a resident of Biltmore Forest, I accepted these recommendations on good faith believing the governing bodies would follow and enforce the ordinance, regulations, policies and codes that govern our town and to which they are sworn to uphold.

I say this to emphasize the fact that I had no idea I was embarking on a journey where my neighbors and I would bear the burden of proof; where I would spend thousands of dollars in legal counsel to understand and navigate this process; where I would witness a neighbor with a proven and ongoing track record of actively and flagrantly ignoring rules and regulations; and that I would witness him would prevail (with the apparent support and encouragement of this board!)

My first appearance before this board was on July 22.

Two neighbors attended the meeting with me. Not only did the three of us submit our objections in person to the special use permit for the permanent goals that are part of the

unauthorized turf structure, we had letters from two additional neighbors objecting to the unauthorized project.

I also submitted for the record a letter from a respected and experienced realtor that addressed specifically how the unauthorized turf structure negatively impacted values of surrounding property, and how the unauthorized turf structure was not in keeping with the neighborhood landscaping and appearance - which are clearly stated repeatedly in the policies and ordinances intended to govern this Town.

I naively assumed this would be an easy decision based on the following five factors:

- 1. Two specific violations of Town ordinances and regulations (negative impact on property value and not in keeping with neighborhood);*
- 2. Written testimony from a subject matter expert addressing these two violations;*
- 3. on the record objections from FIVE neighbors;*
- 4. unauthorized construction and installation of a structure (including the goals) that the Town of Biltmore Forest had already deemed unpermitted and illegal.*
- 5. Mr. Lehman rejected several recommendations by the BOA to alter in any way his unauthorized structure to bring it more into compliance (paint the goals, lower the goals, etc.) He made no concessions and in fact, Mr. Lehman stated that it was critical his children play and practice on a regulation-size goal and that painting or adjusting the goals would negatively impact their playing experience.*

Then out of left field Board of Adjustments member Mrs. Barnes (who was responsible for shepherding Mr. Lehman's case) asked Mr. Lehman if he would like to consider screening as an option to order to keep the unpermitted structure, and started brainstorming landscaping options. And all of a sudden, the BOA is recommending superficial and cosmetic landscaping ideas to for a flawed and unauthorized structure in a futile effort to disguise its fundamental failings.

My neighbors and I were shocked. All of us objected on the record to this recommendation. I expressed on the record to the board my disappointment and following

the meeting a BOA member reached out to me to say I had other options in this case. It was suggested that I consider securing an attorney. This confused and surprised me.

Why on earth would I need an attorney? The Board of Adjustments, from what I know to be true, exists to protect the beauty and integrity of this community. I naively assumed it exists to protect neighbors in good standing. Neighbors like me. The rules and requirements seemed clear. To suggest that I needed to pay an attorney to convince a governance board to follow through on their assigned responsibilities specific to a resident who consistently and flagrantly disregards the rules seemed absurd.

Then the BOA spent August, Sept. and October going back and forth to determine if Mr. Lehman's hand-drawn landscape plans - HAND DRAWN - could adequately screen the unauthorized 4000-square-foot artificial turf field with permanent 8-foot goal posts.

Discussions went on and on about the trees, shrubs, types of plantings, density of plantings, plants indigenous to this area, pots versus no pots, who was responsible for monitoring, what happens if some of the plants die.

And all the while, a much more critical issue was never seriously addressed. Could my property lose value because my next-door neighbor installed an illegal 4000-square-foot artificial turf field in his side yard that cannot, even by Mr. Lehman's own admission, be fully screened. The board was quick to dismiss the devaluing of neighboring property and Mr. Lehman was given months and months of landscaping screening do-overs. And while Mr. Lehman declined the recommendation of the BOA to work with a professional landscaper stating he did not want to spend \$5000 on such a plan, you continued to coach Mr. Lehman on how to make this work. Why didn't the board suggest that I bring further evidence of the devaluing of my property? Because this board was focused a screening plan to would allow Mr. Lehman to keep his illegal goals. During this time, I learned that the illegal, permanent 8x24-foot goal posts are one ruling and that to have the entire structure removed requires neighbors to do more work. So I do. And I become somewhat of an expert on artificial turf. Because at the end of the day, this is not about screening. This

board is setting a critical precedent that impacts not only the beauty and design of our community and value of neighboring properties, but also the quality of our water system and our approach to environmental stewardship. And there will only be more of these kinds of cases to come before this board and it's important for this board to understand the long-term impact of this decision.

I have done extensive research on how artificial turf field is constructed and installed. That research has been submitted to Jonathan and town administrators and is included in the packet I have provided to you. There are many resources addressing both the pros and cons of artificial turf fields. Without fail, however, all artificial turf experts recommend professional installation.

Professional installation of artificial turf is recommended for two reasons:

1) a permanent base structure and edging system - commonly made of timbers, composite plastic or steel 2x4's - is required to secure the artificial turf to size and to ensure it won't slip and slide. As well, the turf can be secured to layers of composite materials that have been permanently installed. The turf is attached to this permanent structure - also called a sub-base - with six-inch galvanized steel garden pins or galvanized metal spiral landscape stakes.

2) and because proper drainage is an absolute must. The artificial turf is designed with thousands of tiny holes because the turf is pervious and needs to drain water quickly. After all, 4000 square feet of run-off water must go somewhere quickly - and that's why proper drainage like exit drains, French drains and catch basins are required. Remember, water draining off the artificial turf can't just soak down to the soil because of the impervious structure - the sub-base - to which the turf is attached. So it needs help getting to the right place, because if the water is not appropriately diverted and drained, it can create run off and flooding.

Artificial turf kills the soil beneath, is in no way environmentally friendly and is not recyclable. Also note, if not regularly and properly cleaned and maintained, artificial turf can

mold, mildew and smell. As well, if not regularly and properly maintained and cleaned, any run off into ground water systems or adjoining property can be toxic. As the turf ages, the tips of the plastic turf break and are released into the environment. While made of plastic, artificial turf has an average life span of six to ten years and must be disposed at a landfill.

The artificial turf field and substructure was never inspected by town administration because Mr. Lehman installed and constructed it without knowledge or approval of the town. In fact, the artificial turf and substructure was completed over two years before town officials brought the case before the BOA.

Because Mr. Lehman installed the turf and substructure without knowledge or approval of the town, there is no record that any type of qualified licensed professional oversaw the installation and construction of the artificial turf field.

It must be noted that the backdoor neighbor to Mr. Lehman, Mrs. Andrea Eglington, has experienced three major floods causing thousands of dollars in damage and repairs, with the most catastrophic occurring in 2018. The ongoing and often unsupervised construction work (including the unauthorized artificial turf soccer field, extensive removal of vegetation and installation of impervious surfaces) at 9 Holly Hill Road has caused significant topography changes relevant to Mrs. Eglington's flooding. She has lived on the property for over 25 years without ever a problem of run off or flooding.

This board's eagerness to accommodate a neighbor who has shown no regard for this board and for his neighbors is disappointing and discouraging. In the meantime, Holly Hill neighbors have worked to maintain good standing as residents and feel like we are on the ~~line~~ Holly Hill neighbors have attended all BOA meetings to oppose the special use permit.

A letter was submitted for the record by one of the top-producing realtors in this area confirming the impact of this structure to the aesthetics and beauty of the neighborhood as well as the impact on property values.

Later she was brought in as a sworn expert and then discredited when Mr. Clarke asked

questions that were, even by expert standards, impossible to answer and served instead to distract and redirect back to the homemade landscaping plan.

This is the only time during this six-month process that neighboring property values were mentioned and discussed and yet it is one of the most critical criteria for special use permits as outlined by the Town ordinances.

I am doing all I can to play by the rules but can't seem to understand the rules. So in the fall I hired an attorney - which doesn't feel great. But people whose opinion I trust - including a member of this board - counseled me to do so. I had no idea that once I hired an attorney, the very group I look to for support and counsel (you all) can no longer speak with me because I now have legal counsel (per Mr. Clark's recommendations}. It feels like I have put everyone on the defensive by following through on a recommendation from members of this group. All of a sudden a slow process is slowed down even more by a ~~ml~~layer of communication requirements. It was disheartening.

On Oct. 18, my attorney submitted a request for a zoning determination from the town that it would determine the entire field as an accessory structure due to the complexity and requirements of the permanent sub-base which acts as the required installation system.

Jonathan Kanipe confirmed that he and Mr. Clark would make that determination and alert my attorney, Jessie Swords, and me to their decision on or before the 8th of November so that we could respond and prepare, if needed, for the Nov. 15 BOA meeting.

I never heard from Mr. Kanipe on or before Nov. 8. I followed up with Mr. Kanipe on Thursday Nov. 11 and he confirmed he had not met with Mr. Clarke. My lawyer and I received a denial of my request on Fri., Nov. 12 - one business day before the next BOA meeting and no time to prepare. We immediately requested additional information from Mr. Kanipe and Mr. Clark in defense of their decision and are appealing this decision.

In the meantime, I was on the lookout for the agenda packet to see if it had any details that would help my lawyer and me prepare for anything specific to the landscaping proposal of the 8-foot tall goals or the decision on the entire field as an accessory structure. According to the

Biltmore Forest website, the BOA agenda packet is generally distributed a week prior to the scheduled BOA meeting - in this case it should have been posted no later than Monday, Nov. 8. When it was not posted on Nov. 8, I reached out directly to the chair of the board on Thursday, Nov. 11 asking about the status of the agenda. He confirmed he could not speak with me directly based on direction from Mr. Clarke and referred by question to the town. And on Friday, Nov. 12 - one business day before the BOA meeting, my lawyer and I received the agenda packet for the meeting that was scheduled for the following Monday.

Since July, I have been hustling to play catch up - trying to crack a steep learning curve on how governance and policy work; how to read the rules and regulations; how artificial turf works and more. I don't know what I don't know. And an important way I can learn and understand is to depend on people who know these things. I have been constantly chasing information, answers and access to the point of likely appearing a nuisance. How could a person like me begin to adequately prepare for these meetings - I don't have any professional training; I don't have an advocate like Mr. Lehman has; and I have one business day to review the agenda, the attachments, consult with my lawyer and so on.

So you can imagine my absolute shock - instead of a review of the hand-drawn landscape designs that his group has volleyed around SINCE JULY, the agenda packet contained an entirely different recommendation - a six-foot tall wooden lattice system (intentionally not called a fence, but essentially a fence). After six months of tedious, weedy discussion re type, growth and size of specific plants, my lawyer and I receive 24-hour notice of an entirely new approach

I was literally rendered speechless. No time to study, no time to prepare and no time to truly understand or communicate that the current artificial turf field extends to the parallel line of the main structure on the property and that the retaining wall to which the six-to-eight foot trellis (that is not a fence, but really is a fence) will be attached extends well beyond the front line. So if approved, you are basically setting precedent - and changing an important ordinance - that would give every Biltmore Forest residents permission to build a 6 or 8 foot trellis completely around their property or anywhere on their property and use it to shield anything they like.

In summary, I cannot understand what the Biltmore Forest Board of Adjustment or the Town expects of me or any other resident in this situation.

Neighbors can't always come to a resolution and it's unreasonable for you to think they can. It's one reason why our town's governance structure exists and it's one of the responsibilities of the BOA - to make the hard decisions in service to the greater community.

I have abided by all the rules; I am not the one who has consistently broken ordinances, policies or codes. I have been willing to follow the direction and counsel of those in the know. I am trying to do the right thing and to be a responsible resident. Why do I feel like I am the bad guy? Why am I required to spend thousands of dollars on an attorney to navigate a process created to protect my interests? Why are my neighbors and my neighbors expected to agree to something - to keep the peace, so to speak - or facilitate the board not having to make the hard decisions.

This case should have never gotten to this point and would never had gotten to this point if the BOA had simply enforced compliance and upheld the rules that are supposed to govern ALL of us. Consider the time, energy, money, anxiety and stress that would have been avoided if this board had exercised their legal duty and simply required Mr. Lehman to remove the permanent goals in July. How hard would that have been?

Meanwhile, Mr. Lehman knowingly breaks ordinances, codes, regulations and policies that govern our town and fails to follow through on his commitments - and he has been granted forgiveness and accommodations EVERY TIME since his arrival in 2016. What message does that send to the residents of Biltmore Forest-the majority of whom would be appalled this was happening next door to them and many of whom are watching closely the outcome of this case?

The final outcome of this case will influence the regard our residents have for our governance. Perhaps leading even more to think that they can build what they like as

they like and ask forgiveness later. Because it will be given.

I conclude by reminding this group that I felt compelled to share these facts and my perspective in hopes that it will positively influence your perspective and the cases that might come for you in the future.

I implore you to not forget the responsible residents who abide by the rules and seemingly bear the unfair stress and responsibility of upholding and enforcing them. Consider what is best for the entire community, not just one who has acted irresponsibly.

Thank you and merry Christmas.

Mr. Matt Baker spoke. Mr. Baker said the original plans are not the same as the current landscaping plans. Mr. Baker said there was no inspection done through this process and said there was a mistake made. Mr. Baker felt if the plan would have went through the proper process and the neighbors were informed along the way, there would have been objections made and things would have been stopped.

Mr. Baker also said many of the objections have not been put into the record properly.

Some of the letters of support were put in but some letters of objection were not put in. Mr. Baker said there were two letters of support provided and there were four objections provided. Mr. Baker stated there was only one objection letter provided in the record. Mr. Clarke asked Mr. Baker if this information is relevant to the appeal. Mr. Baker said yes. Mr. Clarke said the decision made on the accessory structure was determined by Mr. Kanipe in October. Mr. Baker said this is an accessory structure. Mr. Baker said no one could objectively look at this and not call it an accessory structure. Mr. Baker said part of his concern was the safety, the surroundings, and trying to patch things up such as screening and/or putting in a trellis/fence. Mr. Baker would like to see the work done in a timely and safe manner with proper plans provided. Mr. Baker said he would like to see the board help Ms. Price as much as possible to help her feel like it will minimize her property, which would be the right thing to do. Mr. Baker said the landscaping window should be shortened to three months and putting plants in the ground is easy. Mr. Baker said there have been pots sitting

out in Mr. Lehman's yard for months. Mr. Baker said this needs to be done so everyone can move on and the rules need to be enforced, which was not done during this process. Chairman Goosmann thanked Mr. Baker for his comments and that the issue of enforcement was addressed at the last meeting.

Ms. Barnes said she heard concerns about what was approved last month and asked if there was a Variance for what was approved last month that the Board didn't consider. Ms. Barnes said she has not heard or understood if anyone is appealing the decision that was made last month. Mr. Clarke said there is no appeal to what the Board did last month. Ms. Barnes clarified there would be a process if they wished to appeal. Mr. Pearlman asked if the purpose of this effort now to appeal the Town Manager's decision as to what an accessory structure is. Mr. Clarke said yes, this is what the Board is discussing today. Chairman Goosmann said they are taking testimony in support of their request for the appeal of the decision that the Town Manager had made regarding the turf field.

Mr. Clarke said Mr. Swords asked for Charlene Price that the Town Zoning Administrator, Mr. Kanipe provide a written determination to him pursuant to North Carolina G.S. 160-D(403) that the turf field was an accessory structure. Mr. Kanipe made the determination that it was not an accessory structure. Ms. Price and Mr. Swords are appealing that determination. Mr. Pearlman said this is the only time he has ever seen specific definitions of accessory structures related to an artificial turf installation. Ms. Kieffer said we have gotten this before with the installation of the turf. Chairman Goosmann said in the past, the bulk of the discussion was regarding the soccer goal.

Mr. Swords said, in the previous meetings, we were focused on the goal and the Board was treating the turf field as a separate issue. Mr. Swords said they asked for a determination on the separate issue and the determination was that it is not an accessory structure. Mr. Swords said they are appealing this decision to the Board. The only thing they are appealing is the definition of an accessory structure in the Ordinance and how it applies to this AstroTurf. Ms. Barnes said the turf was never before the Board of Adjustment.

Mr. Swords said local governments in North Carolina have no inherent power; it is all with the State. What we end up with is a set of written Ordinances. Once these are passed, they are available to the public. These Ordinances are binding as they are written. It matters how these are written. It is important for these purposes for someone who wants to make changes to their land so they can comply with the requirements. There are neighboring property owners that can expect a

certain amount of predictability and the way this process happens. It also allows you to maintain the character of this Town. The Town Zoning Ordinance are what allows people from changing the character so drastically or so that it becomes unrecognizable. One of the reasons why the property value is so high is people who live in here know a McDonald's drive-thru will not be built in the Town which would destroy their property value.

Mr. Swords discussed the ordinance wording. One has to abide by what the ordinance says. North Carolina Zoning Regulations "cannot be construed to include or exclude by implication that which is not clearly in their expressed terms." It is important because Zoning Regulations are construed very strictly. Secondly, the common and ordinary meaning of non-technical words should be applied unless the Ordinance specifically defines the term. Common and ordinary means of non-technical words. Third, the Ordinance should be interpreted in a manner that avoids absurd or bazaar consequences which Mr. Swords specifically used "accessory structure" as an example. Section 153.004 in the Ordinance are the specific definitions. Every accessory structure is a Special Use and every resident who builds an accessory structure must obtain a Special Use Permit. A Special Use Permit allows the Town to ensure the accessory structure in questions don't disrupt the Town's character and its environs. The definition of accessory structure was read by Mr. Swords which states: A structure incidental and subordinate to the principal use or building on the lot and located on the same lot with such principal use or building. Accessory structures include, but are not limited to, fences, walls, curbs, pools, play sets, statues, water features, playhouses, decorative walls, sculptures, solar collectors, residential street lamps, rock and stone moved from its original location to any other location on the property, and the like.

Mr. Swords said Zoning regulations are against the common law principle in property. They are construed very strictly. Secondly, Mr. Swords said the common and ordinary meaning of non-technical words should be applied unless the Ordinance specifically defines the term. Common and ordinary means of non-technical words. Third, the Ordinance should be interpreted in a manner that avoids absurd or bazaar consequences. This applies specifically to the definition of accessory structure in 153.004. Mr. Swords repeated the definition of the word accessory structure (stated above). Mr. Swords said this definition is a very broad definition of structure. Accessory structure was defined but Mr. Swords said the word "structure" was not defined. Mr. Swords said Mr. Kanipe's determination letter stated the word "structure" means a "vertical structure." Mr. Swords said they are not exhausted and structures are not necessary

vertical. Mr. Swords said some solar collectors are not vertical and the facts known about the turf field materials see there is a vertical and horizontal dimension to it. Mr. Swords said Mr. Kanipe added “vertical” to it and Mr. Swords said this was inappropriate.

Common and ordinary meaning in the word “structure” were discussed by Mr. Swords. Mr. Swords read the definition from Google (definitions from Oxford languages) which states, “the arrangement of and relations between the parts of elements of something complex.” In addition, “a building or object constructed of different parts.” Third, “the quality of being organized.” An illustrated CAD drawing was submitted to the Board by Mr. Swords (included in the agenda packet available to the public). This Board should make the decision that an accessory structure is a structure by the common meaning of the term to include this turf field, as we know it. Mr. Swords said his client; Ms. Charlene Price is worried about the environmental impact of the turf. Mr. Swords included a brochure (available to the public) in the board packet of the environmental concerns of artificial turf. Mr. Swords also indicated the drainage problems this situation has also created. Mr. Swords also stated the color could also be regulated through the special use process. Mr. Swords said he drove by the soccer field and said the golf course is not this color and looks unnatural. Mr. Swords asked this case go through the special use permitting process due to the problems identified by Mr. Swords. Mr. Swords said an ordinance should be interpreted in a manner that avoids absurd and bazaar consequences. Mr. Swords referenced a neighbor asking if hot pink AstroTurf could be put down and the Town not being able to regulate color or regulate lawns. Mr. Swords asked if the Board had any questions. Mr. Pearlman said as he recalled most of the discussion revolved around the goal and then the discussion morphed into the artificial turf. Mr. Pearlman recalled the Board had no power to regulate the color of the turf and that is where that decision came from. Mr. Pearlman said they had no power to legislate against the color of the turf and that is where that decision came from. There was never any discussion from Mr. Swords about the color. Mr. Pearlman said they are not regulating that this is an accessory structure.

Chairman Goosmann asked Mr. Kanipe if he had any comments to make about the appeal. Mr. Kanipe said he would just like to rely on the letter that he provided. Mr. Kanipe said on November 4, 2019 when the Town visited the site and contacted Mr. Lehman about the turf for clarification. Adrienne Isenhower, who was the Town Planner at the time did review it for the perviousness information and determined it met the overall requirement at that time. In

terms of anything else, Mr. Kanipe said he would like to refer to his letter about a “structure.” Mr. Swords said that in 2019, it wasn’t determined whether this was a structure and was only determined it was a lawn. Mr. Swords also said they were not provided written notice of this at the time.

Mr. Baker said compared with the original plan, there is a substantial change and the Board can regulate the landscaping. Mr. Baker said there was no notification or due diligence provided for people to object.

Mr. Lehman said his impression was to determine whether the synthetic turf field was an accessory structure. Mr. Lehman told the Board he felt like he was doing what he was supposed to. Mr. Lehman said he reached out Ms. Isenhower during the initial stages and was given the go ahead from Ms. Isenhower. Mr. Lehman said there were emails exchanged acknowledging this. Mr. Lehman thought he was not breaking any rules at the time since he was given the approval in the past. Mr. Lehman said it was interesting to hear Mr. Swords said one can’t add things you do and don’t want in the ordinance. Mr. Lehman said since he reads the accessory structure definition and it doesn’t include a turf field as an accessory structure, a basketball goal, or a soccer goal that it’s not an accessory structure. Mr. Lehman told the Board there should be a specific ordinance on what residents’ can and cannot have. Mr. Lehman said once decisions have been made by staff, it should be set but Mr. Lehman feels like they are going back and trying to change things. Mr. Lehman said the synthetic turf entails three inches of a sub base and it has 1x6 around the sub base. The turf field goes on top and has staples on it. Mr. Lehman said it isn’t much different than a paved driveway. Mr. Lehman said if they are determining whether the turf field is an accessory structure then asphalt driveways should be an accessory structure, pavers, pebbles that are put in. It shouldn’t apply to ground coverings. Mr. Lehman’s interpretation is that they were only going to discuss the turf field and not all the other factors involved with this.

Mr. Clarke said the Board recognizes the Zoning Ordinances only allows it to say what it can do and made a determination with some advice from Mr. Clarke back in September 2021 that it had no authority to regulate the type of turf.

Mr. Clarke said the Board could either affirm Mr. Kanipe’s decision, reverse it, or modify it or send it back to Mr. Kanipe for further instructions.

Ms. Barnes said in order for her to make a decision she would like expert testimony as to what is installed, how it was done, is there a border around it to decide whether this is a structure. Mr. Clarke said the Board has to decide based on what information was given to them.

Mr. Swords made the comment about how this turf is different from sod and said it is on top of a very precision graded, compacted base. It is also surrounded by timber and is tied to the ground so it does not move and is integral to its use as a field. Mr. Swords also addressed the issue of turf fields not being included in being an accessory structure. The definition of accessory structure written in the ordinance is written very broadly. The definition of structure written in its common use is pretty broad as well. It seems intentional by whoever wrote the ordinance to regulate people building on their land. Vertical structure is a limitation that is not written in there. The interpretation artificially narrowed it. It cannot be addressed every artificial structure the Town regulates without naming every type of structure on Earth. This was most likely the point of wording it broadly and Mr. Swords disagrees with bringing the artificial limitation bringing vertical structures into the definition if it's not built. Mr. Swords said this should have gone through the Special Use permitting process.

Mr. Lehman said if he were to put sod in that area, the amount of water needed to irrigate that area would be tremendous as well as the amount of chemicals and fertilizers that would have to be added. Mr. Lehman said there are tremendous benefits of putting in turf fields. Mr. Lehman said there are high schools all over the country that have them. Mr. Lehman said there are natural in fills and it is permeable.

Chairman Goosmann said he would now like to focus on the decision. Ms. Kieffer told Mr. Swords she didn't feel his examples of vertical structures were very accurate.

Mr. Baker asked if in the picture submitted on Mr. Lehman's file included a retaining wall. Mr. Kanipe said the retaining wall was approved during the original permit process, which is a separate matter that was already approved.

Chairman Goosmann asked Mr. Clarke if the Board is being asked to make a decision as to whether the opinion the Town issued through Jonathan and would they wish to uphold Jonathan's decision or reject that opinion. Mr. Clarke agreed and said they could also modify it and send it back.

Ms. Barnes asked Mr. Kanipe when he wrote that letter if he assumed the turf was permeable. Mr. Kanipe said yes. Mr. Swords said they are asking to Board to determine if the definition of accessory structure in the Ordinance applies to this turf field. Mr. Clarke said he didn't want to disagree with Mr. Swords but Mr. Clarke said Mr. Swords asked for a determination and the Town Administrator made a determination and the issue before them was that determination correct, incorrect, or does it need to be modified. Mr. Swords said does the definition of accessory structure apply to this turf field and hear the reasoning on all sides.

Mr. Cecil Durham spoke and asked if this would be a precedent if someone got sick of mowing the lawn and wanted to put in AstroTurf. Mr. Clarke said it could be.

Mr. Swords said this is not aesthetic installation; it is designed to specifications with multiple components to be a playing field specifically. Mr. Swords said a playing field wouldn't necessarily have the same expectations as a lawn.

Mr. Baker said the size of the field is 4,000 square feet and is a monster.

Chairman Goosmann polled the Board members would agree, disagree, modify, or send back for further proceedings regarding Mr. Kanipe's decision on behalf of the Town for the letter he wrote.

Mr. Chandler affirms the decision but wants further interpretation from the Board of Commissioners, Ms. Kieffer affirmed and agreed with Mr. Kanipe's determination and agreed that the turf is not an accessory structure but would like to see the Board of Commissioners to get involved with the safety and environmental concerns of AstroTurf. Mr. Pearlman agreed, Ms. Barnes agreed with Mr. Kanipe's ruling with the understanding that permeable, artificial turf is installed and is not an accessory structure. Ms. Barnes would like to ask the Board of Commissioners to address this in more detail in the Biltmore Forest Ordinances. Ms. Groce affirmed and agreed with Mr. Durham and said this should not happen again. All five affirmed Mr. Kanipe's letter and would like to see the Board of Commissioners look into this further.

The appeal was denied.

Chairman Goosmann adjourned the meeting at 6:28 pm. The next Board of Adjustment meeting is scheduled for Monday, January 24, 2022 at 4:00 pm.

ATTEST



Greg Goosmann

Chairman



Laura Jacobs

Town Clerk