

MINUTES OF THE BOARD OF ADJUSTMENT MEETING  
HELD MONDAY, OCTOBER 19, 2015

The Board of Adjustment met at 4:00 p.m. on Monday, October 19, 2015.

Members present: Goosmann, Pearlman, Kieffer, Groce, Landau, and Chandler. Mr. Jonathan Kanipe, Zoning Administrator, was also in attendance. Mr. William Clarke, Town Attorney was also in attendance.

Chairman Goosmann called the meeting to order at 4:00 p.m.

Chairman Goosmann swore in the following:

Dr. Walter Brown  
Mr. Mark Masters  
Mr. Jonathan Kanipe

David and Martha Nelson, 100 Chauncey Circle, were called forward to present their extension for the project at 100 Chauncey Circle. Motion was made to extend their permit by Robert Chandler. Rhoda Groce seconded the motion, and was passed unanimously.

HEARING (Evidentiary):

Dr. Walter Brown, 14 Browntown Road, was called forward to present the plans for a detached garage and fence in the rear yard. Mrs. Groce shepherded the discussion. Mark Masters, architect for Dr. Brown, presented the plans for the detached garage. The proposal would include an extension of the existing driveway to allow entrance into the detached garage. Mr. Masters has designed the detached garage with an eye toward matching the existing home, which was restored in an arts and crafts style approximately six years ago. The garage will be set back further from the house with the aim to make it less noticeable from the street.

Mrs. Groce asked for discussion from the applicant about the fence. Dr. Brown indicated the fence would run from the corner of the garage and go back to 15 feet from the property line (rear and side), run westward, and then square off onto the house. Dr. Brown indicated that the fence would be 4 feet high and black wrought iron material. Dr. Brown mentioned plans for

additional landscaping in the Eastern boundary of the property to hide the fence line. Dr. Brown did make mention of the possibility of up to three (3) gates along the fence and would maintain the same style. Dr. Landau stated that it was clearly stated in the application that the garage and the fence would be about 5 feet into the existing setback.

Mr. Pearlman asked about the hardship for the property. Dr. Brown mentioned that the main focus of the project was to improve and expand the living space within the existing footprint of the home, and allow their newly adopted, visually impaired child to reside on the main floor with the parents. Mr. Clarke asked about the size of the lot, and Dr. Brown indicated that the size was more typical of an R-2 lot. It is 0.63 acres, and his lot was zoned R-1 which requires a minimum lot size of 1 acre. If he was constructing the building within the R-2 district, the garage and fence would be within the side yard setbacks, and the fence would be only 5 feet within the setback.

Mr. Clarke also asked whether the garage size was in compliance. Dr. Brown indicated that the garage was of a standard size. Mr. Kanipe verified that the garage doors, and separation of the garage doors, were all in compliance with the Ordinance requirements which allowed the doors to face the street.

Mrs. Kieffer asked about the second detached structure and if that was a required variance. Mr. Kanipe stated that the detached garage and the fence, coupled together, resulted in the applicant having more than one detached structure as allowed by the Ordinance.

Dr. Landau asked whether Dr. Brown could plant additional screening on the Northwest corner if necessary. Dr. Brown agreed and stated he had existing landscaping planted but if it did not grow well, he would plant new items.

Chairman Goosmann verified the setback dimensions within the R-1 zone and said it looks like the structure is being built parallel to the rear corner of the house and that is the most logical location for the garage. Dr. Brown said that is correct.

Chairman Goosmann asked Mr. Clarke to verify the hardship considerations. Mr. Clarke said that the adoption of a six year old, visually impaired child was certainly a hardship related to the public health and welfare of the neighborhood.

#### DELIBERATION & DETERMINATION

Mrs. Groce summarized the facts and requests for a Conditional Use Permit and Variance approval requests. Dr. Walter Brown of 14 Browntown Road is seeking a Conditional Use Permit for the following: construction of a 23'x23' detached garage, construction of a black wrought iron fence in the rear yard. Seeking Variance approval for the following: exceeding the maximum roof coverage by 70 square feet, construction of the garage within the side setback, and construction of a fence within the side and rear yard setback and exceeding the number of accessory structures. The stated hardships is the fact that he is adopting a six-year-old visually impaired child and wants to provide a safe place for him. Also, he expressed his desire to construct a bedroom on the upper level of the floor therefore by using the existing garage for expanded living space.

Mr. Clarke added to the facts that this house was constructed prior to the existing Ordinance, and that the existing house, as constructed, took up a significant portion of the available square footage area on the property. The construction of the house predated the square footage limitations. The existing house is on a small lot, approximately 0.63 acres, and the existing house took up a good portion of the lot.

Chairman Goosmann asked for a motion, and Mr. Lowell Pearlman made a motion to approve the Conditional Use Permit and Variances as requested be granted to Dr. Walter Brown of 14 Browntown Road, for a Conditional Use Permit and Variance and that the facts recited by Mrs. Rhoda Groce and her summation be accepted as findings of fact to support this grant. The Board has inspected the site and no neighboring property owner has objected.

Further, Mr. Pearlman moved that the Board find that granting this Conditional 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 1005.03 (2) and (3) of the above ordinance. The applicant has been informed that 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.

Further I move to the Board that granting this Variance satisfies Further, based upon the foregoing findings, Mr. Pearlman moved that the Board find that granting this variance satisfies the applicable section of 1005.04 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. He further moved the Board to find that 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 for a Conditional Use Permit and Variance was seconded by Dr. Landau and unanimously approved.

Chairman Goosmann also added that the applicant agreed to buffer around the fence as well as around the side if there were any bald spots or if any neighbors were to complain. Dr. Brown agreed. The vote was unanimously approved.

The approval of the minutes from the September 8, 2015 were discussed. Mrs. Rhoda Groce mentioned, on page 8 and 10, the name should be corrected to Mrs. Eleanor Owen. The name of Sheryl Groce was also spelled wrong on the first page and on page 17. Robert Chandler made a change to Merry Jenkins name spelling. On page 14, paragraph 4, the remark related to "horse trail" was removed. The minutes as amended were motioned for approval by Lowell Pearlman and seconded by Rhoda Groce. The minutes were approved.

Mr. Billy Clarke, Town Attorney, relayed the information regarding solar collector panels that he researched from last month's meeting. Under the new North Carolina law, Senate Bill 25 prohibits local governments from regulating building materials. Under the current Zoning Ordinance, solar panels and new construction of a roof are a building element and there is a way in which local governments can regulate solar collectors on a roof which slopes down and open to a common or public area. Local governments can have an ordinance that regulates solar panels but the current regulation in Biltmore Forest's ordinance does not do that. Mr. Clarke's advice is that solar panels cannot be regulated under the current ordinance.

Mr. Pearlman asked whether the Town should consider other ordinances that may or may not need to be updated that are in conflict with state law. Dr. Landau asked whether the Town Board was aware of the issue with solar panels and the inconsistencies. Mr. Clarke indicated that he had prepared a similar memorandum for the Board and provided information to them.

Mrs. Kieffer mentioned that she received a phone call from a neighbor of Bob Weiler regarding Dr. Crosby's solar panels and he wanted to know whether the Board of Adjustment would not consider the item. Mrs. Kieffer indicated that she had asked that the applicant bring the panel to show what the accessory use may look like on the roof. Mr. Clarke said he had received a similar call from Dr. Crosby but he could not give him legal advice.

The meeting was adjourned at 4:28 p.m.

The next meeting of the Board of Adjustment was scheduled for Monday, November 16, 2015 at 4:00 p.m.

ATTEST:

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Greg Goosmann  
Chairman

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Jonathan B. Kanipe  
Town Administrator