

MINUTES OF THE BOARD OF ADJUSTMENT MEETING  
HELD MONDAY, JULY 13, 2015

The Board of Adjustment met at 4:00 p.m. on Monday, July 13, 2015.

Members present: Goosmann, Pearlman, Kieffer, Groce, Chandler, and Landau. 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:

Mr. Michael Flynn  
Mrs. Elizabeth Flynn  
Ms. Cheri Whitney  
Mr. David Bourne  
Mrs. Laura Bourne  
Mr. Hutch Kerns  
Mrs. Mary Jenkins

Motion was made by Mrs. Rhoda Groce to approve the meeting minutes from May 18, 2015. The motion was seconded by Mrs. Lynn Kieffer and unanimously approved.

Chairman Goosmann began discussion of a permit extension for Mr. James Taylor and Mrs. Sherry Taylor of 324 Vanderbilt Road for a prior approved Conditional Use Permit. Their approval was from October 2014. The contractor indicated they were unable to get the job done within a six month time frame and are now ready to begin construction. The Taylors have requested renewal of the permit. The project scope and design have not changed since October.

Chairman Goosmann called for a motion to extend the project.

Mr. Lowell Pearlman made a motion to approve an extension for their original permit. This was seconded by Dr. Richard Landau. All voted in favor and the item was unanimously approved.

HEARING (Evidentiary):

Mrs. Rhoda Groce shepherded the discussion of plans for Michael and Elizabeth Flynn of 408 Vanderbilt Road. They are seeking a conditional use permit and variance approval to allow the placement of a covered pathway off of their existing detached garage.

Chairman Goosmann invited anyone to step forward and look at the pictures of the project. Mrs. Groce invited Mr. and Mrs. Flynn to bring their proposal before the Board. Mrs. Flynn stated they are seeking to build a covered walkway to connect the rear of the garage into the kitchen to achieve covered access from the garage. Mrs. Flynn provided drawings to demonstrate the plan. After further review, the project did not fall inside the setback, as there was eight (8) feet between the garage and setback. Mrs. Flynn noted their original intent was to enclose the pathway, but they decided against this so the neighbors would not have to look at a solid brick wall. Mrs. Flynn also noted that their neighbors at 410 Vanderbilt Road had a similar design for their covered pathway. Mrs. Flynn said the new construction would also be buffered.

Chairman Goosmann clarified that it is just this walkway that we need to focus on and the kitchen extension, discussed on site, is for the Design Review Board approval since it is attached to the home. Mr. Kanipe said yes, that is correct.

Dr. Landau asked Mrs. Flynn if they spoke to the neighbors about the project. Mrs. Flynn said she had spoken with them.

DELIBERATION & DETERMINATION

Mrs. Groce recited the facts and made a summation of the case.

Michael and Elizabeth Flynn of 408 Vanderbilt Road are seeking a Conditional Use Permit and Variance approval for construction of a covered pathway from their existing detached garage. It will be open from the rear of their garage to connect a proposed kitchen renovation

addition. The entirety of the work would be done outside the setback and the existing garage is approximately 28 feet from the side of the property line leaving 8 feet to construct the pathway before entering the side yard setback. In a later application, the Flynnns propose expanding the kitchen to allow room for an elevator from the kitchen to the lower level of the house and this pathway off the back of the garage would provide access to the house. These changes would provide safe and independent, all-weather wheelchair access into and throughout the home. They would also be willing to install additional landscape vegetation to increase the buffer between their extension and their neighbors.

Chairman Goosmann also added that roof coverage and impervious surface coverage amounts are within the parameters allowed by the current Ordinances.

Mrs. Lynn Kieffer made a motion to approve a Conditional Use Permit and Variance as requested be granted to Michael and Elizabeth Flynn of 408 Vanderbilt Road for Conditional Use Permit of a covered pathway and a Variance for construction of a second accessory structure connected to the detached garage, and that the facts recited by 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, Mrs. Kieffer 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 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.

Further, based upon the foregoing findings of fact, she moved the Board to find that granting this variance satisfied the applicable Sections 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. She 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 Mr. Pearlman and unanimously approved.

HEARING (Evidentiary):

Chairman Goosmann proceeded with Providential Investment Group, LLC of 1111 Hendersonville Road.

Mr. Robert Chandler shepherded the discussion of plans for Providential Investment Group, LLC of 1111 Hendersonville Road. Conditional Use Permit and Variance to allow construction of a concrete sidewalk in front of the building.

Ms. Cheri Whitney referenced pictures which indicated the lower level of the building owned by Dr. Phillips at the corner of Hendersonville Road and Rock Hill Road. Ms. Whitney informed the Board that her commercial real estate firm had obtained a tenant to occupy this space which was previously unoccupied. For health and safety issues, the owner needs to build a sidewalk from an existing door that is on the street of the Hendersonville Road side to connect with the driveway in between the properties. There is a berm in front of the proposed sidewalk location and we will be taking down some existing landscaping. Most of the landscaping is not currently visible from Hendersonville Road because of the berm. The owner has agreed to do some soil retention on the berm side that faces the building. The berm that faces the street is already landscaped.

Chairman Goosmann asked if the trees Ms. Whitney referenced are less than 6 inches in diameter. Ms. Whitney said yes.

Mr. Chandler asked whether there was much expectation that the sidewalk would be used frequently, or if this was just a life safety requirement for code purposes. Ms. Whitney confirmed that the main entry to and from the business would be from the main entry elevators above the new office.

#### DELIBERATION & DETERMINATION

Mr. Chandler recited the facts for the property at 1111 Hendersonville Road. Providential Investment Group, LLC is requesting the Board's approval for Conditional Use Permit and Variance to allow construction of a concrete sidewalk. The owners have a space in the basement they would like to turn into additional office space. The only exterior work necessary to accomplish this is the construction of a sidewalk outside the front door of the eastern side of the building over to the side door on the southern side of the building. The front door is existing but is concealed as it is located behind a berm.

The applicant proposed removal of some of the existing landscaping to replace a sidewalk in the desired location but the berm and landscaping on top will remain in place. The sidewalk itself would not be visible from Hendersonville Road. There are a total of four trees that would be removed which are less than six inches and some additional shrubbery in order to accommodate the sidewalk. This building, along with the other commercial buildings to the south, were approved by the Board of Adjustment earlier. The sidewalk is being built for life safety reasons.

Dr. Landau made a motion that a Conditional Use Permit and Variance for construction of a sidewalk be granted to Providential Investment Group, LLC of 1111 Hendersonville Road and the facts recited by Robert Chandler and his summation be accepted as findings of fact to support this motion. The Board has inspected the site and no neighboring property owner has objected.

Further, Dr. Landau moved the Board define 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 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.

Further, based upon the foregoing findings of fact, he moved the Board to find that granting this Variance satisfied the applicable Sections 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 was accepted by Chairman Goosmann. Mrs. Groce seconded the motion; and was unanimously approved.

HEARING (Evidentiary):

Chairman Goosmann proceeded with Mr. David Bourne and Mrs. Laura Bourne of 27 Hemlock Road.

Mr. Pearlman shepherded the discussion of plans including Variance applications for the number of accessory structures, a structure located in the front yard, and exceeding the impervious surface and maximum roof coverage requirements. The application also includes

Conditional Use Permits for accessory structures in conjunction with the project. Mr. Hutch Kerns, Kerns Landscape Architect, representing the Bournes, explained the home plans. There are three main buildings including the main house which is very slender. It has covered porches and is designed to get a lot of daylight in the house. The garage will be at the back corner of the property.

There will be an endless pool which is 8x19 so you can swim in it without having a long lap pool. It is placed in the side yard with some gardening areas. The back and sides will be enhanced natural forest. The Bournes would like to clean it up a little bit by pruning, but generally, it would be left alone. In the secondary zone, all trees would be kept but the area would be cleaned out to allow some light. The areas around the house are open to outdoor play.

Mr. Kerns further explained the storm water provisions on the property, and noted that their proposed storm water designs would impose very minimal impact to the storm water system.

Mrs. Kieffer asked for difference between stone walls and fences. There is about 3 feet in the backyard until the existing forest around the back of the fire pit. Mr. Kerns indicated they propose a hearth and fire pit in this area. There will be a private garden space off the master and a stone wall.

Mr. Pearlman clarified with Mr. Kanipe regarding the square footage. The variance application request shows an impervious surface overage of 733 square feet for the variance but Mr. Pearlman believed this was actually 1,140 square feet. Mr. Kanipe confirmed and said Mr. Pearlman's math was accurate. The variance application request to exceed the maximum roof coverage indicates an overage of 630 square feet but Mr. Pearlman felt this was actually 748 square feet. Mr. Kanipe confirmed with Mr. Pearlman that is correct.

All of these stone paths were counted as impervious surface. Mr. Pearlman said you are requesting six accessory structures and only one is allowed by the ordinance. Mr. Pearlman

confirmed this. Mr. Clarke said one accessory building is allowed. In order for you all to approve the variance, I've given you all the language required by state statute.

Upon application, when unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the Board of Adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following:

- (1) Unnecessary hardship would result from the strict application of the ordinance; it shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
- (2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances as well as hardships that are from conditions that are common to the neighborhood or the general public may not be the basis for granting a variance.
- (3) The hardship did not result from actions taken by the applicant or the property owner.
- (4) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

Mr. Pearlman asked which structures are involved in this. Mr. Clarke said, it is the garage and the potting shed.

Mr. Kearns said the issue of the garage is that the Ordinance does not allow an accessory structure to be larger than 750 square feet. Mr. Clarke said it is an additional accessory structure and it is larger than allowed as a detached structure.

Mrs. Kieffer asked if there was going to be an apartment over the garage. Mr. Kearns said it would be to the side. Mrs. Kieffer said it has an awning on both sides of the entrance, and extends above the garage.

Mr. Pearlman asked if there is any way Mr. Kearns can change the plans where the garage is attached to the house. Mr. Bourne said we could cut down the 30 inch red oak tree. It is



the biggest tree on the property and he likes trees. Mr. Clarke said to Mr. Bourne you can decide if it is a hardship.

The issue is not the size, but the structure itself. Mr. Kearns asked if the garage were connected to the house, it would not be an accessory structure, is that correct? Mr. Clarke said yes.

Mr. Kearns asked if it was possible to connect the other small building to the house with some sort of breezeway. Mr. Clarke said the Ordinance was quite specific that you cannot make two buildings into “one” by using a breeze way, but if you are doing new construction then yes, you probably could make it part of the house. In other words, if there are two existing buildings on a property, you cannot construct a breeze way to make them one but you can construct another one.

Mr. Pearlman asked if they would consider tabling this request and perhaps reexamining options and coming back before the Board.

Mr. Bourne agreed, but wanted to know how far that would put them back. Mr. Kearns asked if the tree would be considered a hardship. Mr. Clarke said that the variance statute requires the Board to find that all provisions are met, and if the Board finds all of these things, it shall grant a variance. On the first one, you can certainly make the argument that having to remove this large tree is a hardship. You can also argue the hardship results in conditions that are peculiar to the property. Certainly that tree is peculiar to the property.

The question for the Board is whether allowing this is consistent with the purpose and intent of the Ordinance and a number of things come into play there. One is, limiting the number of structures; this is a new house. A lot of houses in Biltmore Forest are older houses that people are doing things to, so we have a number of structures that may have already existed prior to the creation of the ordinance. The second issue is the maximum roof coverage and size of the structures.

The reason the Board created this ordinance is to make sure the size of the house was reasonable for the lot. Mr. Clarke said that he cannot make the decision and the Board can

make a decision today if the applicant would like. If they make a decision to not allow the variance, you as the applicant cannot reapply for one year.

Mrs. Kieffer said it's a beautiful house and it will be nicely nestled into that lot.

Mr. Clarke said that where this house backs up to the Parkway would certainly come into play in terms of peculiarity.

Mr. Pearlman asked how they want to proceed. Mr. Clarke informed the applicants that they can amend their plan. Chairman Goosmann said this is not uncommon and you can do that if you choose to do so. Mr. Kearns said, we wanted to save the tree and the other consideration is the screened in porch.

Mr. Pearlman asked for clarification if they decide to change their plans as to what they can do to expedite it. Mr. Clarke said they can amend their request so they would not have the garage as an accessory structure and they would only be requesting the swimming pool, cabana, and shed. Impervious surface requirements would still pose a problem.

Mr. Kearns wants to know what counts as connected. Mr. Pearlman said it might behoove the applicant to get everything lined up before asking this Board to move in some direction and not be satisfied with the direction. Mr. Bourne agreed and said I think we should delay this by a month. Chairman Goosmann asked if anyone in the audience wants to contribute anything one way or another.

Mrs. Mary Jenkins was sworn in by Chairman Goosmann. Mrs. Jenkins believes the plans are beautiful and applauded the Bournes for staying with the natural landscape. Mrs. Jenkins's primary concern was the removal of a large tree, such as the 30" red oak, and whether this would result in more runoff going down the hill to their property along the abandoned road. Mrs. Jenkins said she looked forward to having them as neighbors.

Chairman Goosmann said it sounds like if you were to move the garage to attach then it will be closer to the house, and further away from the neighboring property. You have agreed to buffer on that side anyway, so there will be plenty of buffer. There are also erosion control measures that are part of construction for the Town and County. Mr. Goosmann asked whether that was something they would address, and Mr. Kerns agreed.

Dr. Landau indicated that if they intend to relocate the garage, it would be helpful to this Board to get as close as you can to the roof coverage. That just makes our job that much easier if you can look at that too.

Mr. Pearlman asked how they would like to proceed. Mr. Kerns said I would like to know if the Board could see the tree as a hardship.

Mr. Pearlman stated if the Board said no and the request is denied, the applicant would have to come back in a year. Mr. Pearlman advised the applicant may want to look at the situation more closely.

Mr. Clarke said you need to know that you can appeal and you always have the right to appeal in an appeal process. The strict application of that Ordinance does not make you move that tree. You could build a house somewhere on this lot that would not impact the tree. It is not the Ordinance that is requiring you to remove the tree.

Mrs. Groce asked if it was possible to move the whole structure away from the tree. Mr. Kerns said the shape of the house is too big.

#### DELIBERATION & DETERMINATION

Chairman Goosmann asked the applicant if they would like to consider a motion to table the matter. Mr. Clarke said the applicant could withdraw their application and submit the application again at a later date. The applicants elected to withdraw their application for the time being. There were no additional comments from the Board.

The next meeting was set for Monday, August 17th at 4:00 pm. Chairman Goosmann adjourned the meeting at 4:58 pm.

ATTEST:

---

Greg Goosmann  
Chairman

---

Jonathan B. Kanipe  
Town Administrator