

MINUTES OF THE BOARD OF ADJUSTMENT MEETING
HELD MONDAY, SEPTEMBER 28, 2015

The Board of Adjustment met at 4:00 p.m. on Monday, September 28, 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 4:12 p.m.

Chairman Goosmann swore in the following:

Mr. Phil Hardin
Mrs. Lila Hardin
Mr. George Goosmann
Mrs. Elaine Goosmann
Mr. Mark Wilson
Mr. Richard Puskas
Mrs. Lyn Puskas
Ms. Leigh Jackson
Mrs. Eleanor Owen
Dr. Brown Crosby
Mr. David Bourne
Mrs. Laura Bourne
Mr. Hutch Kerns
Mrs. Merry Jenkins
Mrs. Cynthia Justice
Mrs. Mary Margaret Saunders
Mr. Joshua Redmond
Mr. James Groce
Mrs. Sheryl Groce

Motion was made by Mr. Lowell Pearlman to approve the meeting minutes from August 17, 2015. The motion was seconded by Rhoda Groce and unanimously approved.

HEARING (Evidentiary):

Chairman Goosmann bypassed Shane Robichaud of 1 Lone Pine Road.

DELIBERATION & DETERMINATION

Shane Robichaud and/or representing parties were not present at the meeting.

HEARING (Evidentiary):

Chairman Goosmann began discussion for Phil and Lila Hardin, 12 East Forest Road, who were called to present their plan. Mr. Lowell Pearlman shepherded this discussion.

Mr. Hardin presented two copies of the planned pergola installation, noted as a new attachment and presented his plan.

Mr. Pearlman asked whether they requested a Conditional Use Permit or Variance. Mr. Jonathan Kanipe indicated they asked for a Conditional Use Permit only.

Chairman Goosmann indicated that the Board had visited the property earlier, and that, due to the lay of the land, it was likely that the structure would not be visible. The structure was detached, there were no additional structures, and it is planned to be constructed outside of the setbacks. Chairman Goosmann asked if Mr. and Mrs. Hardin would be willing to install some buffering if neighbors asked the question. Mr. Hardin said that the structure would likely not be visible from the road or other properties. Mr. Pearlman asked again about vegetation and buffering if necessary, and Mr. Hardin agreed they would buffer if necessary.

Mr. Pearlman asked if there were additional questions or comments from Mr. and Mrs. Hardin. Mr. Hardin replied no.

DELIBERATION & DETERMINATION

Chairman Goosmann asked Mr. Pearlman to present the findings of fact. Mr. Pearlman recited the facts. Mr. Phil and Lila Hardin of 12 East Forest Road are requesting a Conditional Use Permit to move an existing pergola from the east side of their home to the south side of their home. They have shown the Board a landscape plan and a plan of how the structure is going to interact with the existing property. They have agreed to place landscape buffer if any of the neighbors object. Chairman Goosmann verified with Mr. and Mrs. Hardin that these were correct

and asked if there were additional comments. Mr. Hardin said no.

Chairman Goosmann asked for a motion, and Mr. Robert Chandler made a motion to approve the Conditional Use Permit for Phil and Lila Hardin of 12 East Forest Road, for relocation of a metal accessory structure from rear yard to side yard and that the facts recited by Mr. Lowell Pearlman and his 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. Chandler 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.

The motion for a Conditional Use Permit and Variance was seconded by Mr. Pearlman and unanimously approved.

Conditional Use Permit was approved.

HEARING (Evidentiary):

George and Elaine Goosmann, 10 Hemlock Road, presented their plans for a new pergola in the rear yard. Chairman Goosmann indicated that the applicant, George Goosmann, was his father and that he would not take any action on the case and merely just shepherd it along.

Mr. Robert Chandler asked Mr. and Mrs. Goosmann to briefly describe their project. Mrs. Goosmann went through the plans for the pergola installation of a 10 feet tall and 10 feet wide light gray stained pergola in the rear yard. It will have 12 foot beams over the top. It will be wood. Mrs. Goosmann showed the pictures. Mr. Chandler asked if any neighbors had objected to the project or if it was visible from any adjacent properties. Chairman Goosmann asked if they spoke to the neighbors. Mr. George Goosmann said there were no objections, and only one neighbor had asked what the letter from the Town was in reference to and that was it. Mrs. Elaine Goosmann said that perhaps only the Woods at 12 Hemlock Road could see it from their laundry room window, but that was all. Mr. George Goosmann said that he had spoken with the

Woods and they were fine with the project. Mr. Chandler verified this pergola will be built on the existing patio. Mr. & Mrs. Goosmann said yes.

DELIBERATION & DETERMINATION

Dr. Rich Landau recited the facts and made a motion to approve the Conditional Use Permit. George and Elaine Goosmann of 10 Hemlock Road are requesting a Conditional Use Permit for an accessory structure, a pergola to be constructed in their rear yard and it will be constructed on an existing patio. It may be visible but the patio is visible as well from a neighbor and no neighbors have objected. Chairman Goosmann asked if there were any questions or comments from the audience.

Mr. Lowell Pearlman made the motion that a Conditional Use Permit as requested be granted to George and Elaine Goosmann of 10 Hemlock Road for a pergola and the facts as recited by Rich Landau and his 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.

The motion for a Conditional Use Permit was seconded by Mrs. Rhoda Groce and unanimously approved.

Conditional Use Permit was approved.

HEARING (Evidentiary):

Mrs. Debra Stonecipher, 15 East Forest Road, was called.

DELIBERATION & DETERMINATION

Mrs. Stonecipher and/or her representative were not present so the Board moved to the next case.

HEARING (Evidentiary):

Keith and Barbara Love, 6 Forest Road, were called. Mr. Mark Wilson, landscape architect for Broadbrook Landscaping, came forward to present the driveway plans. Mr. Chandler shepherded the discussion. Mr. Wilson began discussion by going through the history of the driveway and the need to rehabilitate it. Mr. Wilson indicated that the cattle grate would be steel or aluminum, and that the two gates requested were to provide pedestrian access and ensure that the deer could not cross into the property by going around the cattle grate. Mr. Wilson indicated that the gate on the left hand side is for symmetry only. The secondary use of the gates would be to force the deer to jump over those gates to get in but then they have to deal with the deer grate. On the right hand side, there would be a 2 foot wide pedestrian access with a swing gate and on that other side, it would be a fixed gate. This is to make it symmetrical rather than purely functional. Dr. Landau asked where the gates would be in respect to the deer crossing. Mr. Wilson said unfortunately our surveyor did not pick that up. Dr. Landau asked where the deer gates would be and Mr. Wilson pointed it out on the drawings. Mrs. Kieffer asked for a larger drawing. A large scale drawing was provided.

Mr. Pearlman asked whether the deer gate and cattle grate were on the original plan. Mr. Wilson said he did not believe so. He also said the original intention was to try the deer netting without taking any further steps but of course the deer figured it out rather quickly. The Town Attorney, Mr. William Clarke, asked about the approval of the deer fence approximately two years ago. Mr. Wilson agreed and said yes it was approved. Mr. Clarke asked if the deer fence is working. Mr. Wilson said yes the fence is working however, the existing driveway is where they are coming through which is the front driveway.

Chairman Goosmann asked for additional comments, and asked Mr. Chandler to recite the facts.

DELIBERATION & DETERMINATION

Keith and Barbara Love at 6 Forest Road are applying for a Conditional Use Permit for gates associated with the driveway and entrance renovation. The driveway renovation has been approved separate from this, but because of the way the gates are set up a conditional use permit is necessary. The gates have been outlined and will be about 4 ½ feet tall and will be on either

side of a cattle grate that is keeping the deer from entering the property. The main issue for doing this is because of a hardship of keeping the deer out and the Design Review Board will look at the architectural portion of this. Dr. Landau added that it was a variance also for the gates in the front yard. To clarify, a variance and a conditional use permit is needed.

Dr. Landau made a motion to approve the conditional use permit and variance. I, Rich Landau move that a Conditional Use Permit and Variance as requested be granted to Keith and Barbara Love of 6 Forest Road for construction of two wooden gates in the entrance of the property and that the facts and findings recited by Robert Chandler in his 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, Dr. Landau 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.

Mrs. Rhoda Groce seconded the motion. All in favor, motion was approved.

HEARING (Evidentiary):

Richard and Lyn Puskas of 933 Hendersonville Road Richard and Lyn Puskas, 933 Hendersonville Road, presented their project. Mr. Puskas said their goal was to improve the design and safety of their property. Mr. Puskas said the idea was to put a stone and masonry wall within the existing tree line and to save as many trees as possible when constructing the wall. Mr. Chandler asked them to describe the makeup of the wall itself and its dimensions.

The wall would be 6 feet, with columns that are 8 inches taller. The wall would be pebble dash finish on the face of all walls. Mr. Chandler asked for verification of the color, and Joshua Redmond, representing Patrick McCarthy Construction, said it was stone gray. The columns themselves will be made of rock block. The columns are 2'x2' and the walls will be 12 inches wide.

Mrs. Kieffer asked whether the wall would provide more sound barrier than just the arbor vitae. Mrs. Puskas indicated that she believed it would provide more sound buffering, but also that safety and security would be significantly improved. Mrs. Puskas referred to a recent incident in which a car went into the lot at 939 Hendersonville Road.

Chairman Goosmann asked if the owners had received approval from the NC DOT. Mr. Redmond indicated that he had spoken with the DOT, and they approved it since it was an existing driveway.

Mrs. Kieffer asked what the size of the existing gate was. Mr. Puskas said that the gate was approximately 8 feet tall, and Mr. Redmond indicated he recalled measuring it at 80 inches. There was additional discussion about whether the walls would support a gate that high, and Mr. Puskas indicated it was only 8' at the center of the gate.

Mr. Chandler asked the Town Administrator whether this would go to Design Review Board. Mr. Kanipe said it would, and the Design Review Board would review the wall but if the existing gate is approved to be moved, there is not much review that can be done with that.

Mrs. Kieffer asked about the total depth of the footers. Mr. Redmond indicated it was one foot deep for the most part, but modestly deeper in a few other spots.

Mr. Chandler asked if they would be willing to replace the trees if they died as a result of the wall construction. The applicant agreed to this request.

DELIBERATION & DETERMINATION

Mr. Robert Chandler reviewed the proposal and stated the facts for the Conditional Use Permits and Variance requests. Richard and Lyn Puskas of 933 Hendersonville Road are applying for a Conditional Use Permit and Variance to request construction of a block and mortar wall with stone caps and columns and relocation of an existing iron gate. A Conditional Use for the block and mortar sheltering wall within the front setback and relocate the iron gate within the front setback. A Variance request to construct the wall within the front setback to relocate the gate within that front setback and a Variance request to construct an asphalt parking area adjacent to Hendersonville Road within the front setback. The relocation of an existing gate and fence is included and being relocated closer to Hendersonville Road. The applicants have also said that if there is any buffering that has gone away, they will replace it to keep the buffering in place.

Chairman Goosmann asked about the dimensions of the asphalt driving in front of the

home. Mr. Redmond went through these proposed dimensions according to the drawings.

Mrs. Lynn Kieffer made a motion to approve the Conditional Use Permit and Variance. I, Lynn Kieffer move that a Conditional Use Permit and Variance as requested be granted to Richard and Lyn Puskas of 933 Hendersonville Road for a Conditional Use Permit to construct a mortar, a wall within the front setback, and an iron gate to relocate and the and Variance to construct the asphalt parking area adjacent to Hendersonville Road within the front setback. The facts as recited by Robert Chandler in his 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 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.

Mrs. Groce seconded the motion. Chairman Goosmann asked for any questions from the audience. No questions were noted. The Board voted unanimously to approve.

HEARING (Evidentiary):

Chairman Goosmann called on Leigh Jackson and G. Trujillo, 14 Hilltop Road, to present their case. Ms. Jackson presented her case, and noted that her property was the only on the block that did not have fencing in the rear yard. Chairman Goosmann stated that Mr. Kanipe asked Ms. Jackson to stop replacing the fence due to not getting prior approval. Chairman Goosmann asked for a picture of the fence they are proposing. The south side had chain link fencing and the north side had more of a chicken wire type fence. Ms. Jackson said they cleaned out the whole back corner of the lot. The picture shows the new proposed fence and the trees.

Ms. Jackson's neighbor is Mrs. Laura Copenhaver. Her sister, Eleanor Owen, was present to represent Mrs. Copenhaver. Ms. Jackson explained to Mrs. Owen the proposed idea for the new fencing. Mrs. Owen stated that Mrs. Copenhaver is concerned as to what will be visible from her property, as she does not want to see the fencing. Ms. Jackson indicated that Mrs.

Copenhaver does see fencing right now and referenced pictures of the tree barrier. Ms. Jackson stated she wants to propose putting the new fence farther inside so you cannot see it and they hope to put plantings around it. Ms. Jackson is willing to work with anyone if they have issues with this proposal.

Mr. Pearlman asked whether the Town could develop an approved list for fencing, and Chairman Goosmann indicated that Mayor Goosmann was present and would more than likely be willing to take that to the Town Board. The Mayor, George Goosmann, indicated he would ask the Town Counsel and Town Administrator to prepare some suggestions for them.

Ms. Jackson went through the proposal for Mrs. Owen and showed the existing concrete masonry block fence. Mrs. Owen asked what the setback was, and Chairman Goosmann said it was 20' from the rear. The fencing is 6' from the rear of the property lines and on the sides it is approximately the same as the existing fencing line.

Mrs. Owen asked whether there was a specific screening plan in place for landscaping. Ms. Jackson indicated that she does have a plan for this, but they were unsure for now as to what it would be until they had the bamboo removed. Ms. Jackson said she would be willing to work with the neighboring property owner, Board of Adjustments, and Town Administrator to develop a plan. Chairman Goosmann asked if it was appropriate to approve the permit with the understanding that if the screening was not appropriate, the Board of Adjustments could then require a new buffering plan for the property. Mr. Clarke said yes.

An unidentified audience member suggested the Town have an approved buffering plan in place. Mrs. Kieffer said this will also go to the Design Review Board.

Chairman Goosmann reiterated that the buffering is required for the permit, and that if complaints arise from the Town and any neighbor the landscape plan and buffering could be reviewed by the BOA subsequently.

DELIBERATION & DETERMINATION

Chairman Goosmann recited the facts and said Lee Jackson and G. Trujillo, 14 Hilltop Road, are requesting a Conditional Use Permit to approve the replacement of existing fencing and a new 4' high black mesh fence in the rear and side yards. These will be placed 6 feet within the existing boundary line as replacement for existing fences which are being removed and replaced. Also, Chairman Goosmann noted that the applicant is prepared to buffer this from the neighboring property owners and that the buffering can be reviewed by this committee subsequent to its installation and if it is deemed unsatisfactory by complaint from a neighbor,

complaint driven, or by the Town Administrator. This will exist in the rear and side yard. Further, a variance approval is required to construct the fence within the rear and side yard setbacks.

Mrs. Groce made a motion for approval, and included in her motion that a neighbor has supplied a letter of opposition to the proposal. Mrs. Groce noted that the neighbor's representative, Mrs. Eleanor Owen, was satisfied after the discussion.

Rhoda Groce made a motion to approve a Conditional Use Permit and Variance to Lee Jackson and G. Trujillo, 14 Hilltop Road. The approvals include a conditional use permit for replacement of an existing fence which is a 4 foot high black mesh fence in the rear and side yard. A variance approval is required to construct within the rear and side yard setback and that the facts and findings as recited by Greg Goosmann in his summation be accepted as findings of fact to support this grant. The Board has inspected the site and a single neighbor has objected but a representative for that neighbor has been present at the meeting today and they offered no objection to this motion.

Further, Mrs. Groce 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.

Dr. Landau added the facts were amended to note that the side fencing was not to be 6 feet from the property line, but would be installed in the same location as the existing fence.

Dr. Landau seconded the motion. Motion was approved unanimously.

HEARING (Evidentiary):

Chairman Goosmann called on Dr. Brown Crosby of 26 Stuyvesant Road. Mr. Clarke, Town Attorney, disclosed his conflict of interest in regards to his son being a fifty (50) percent owner of Sugar Hollow Solar. Mr. Clarke does not represent his son or his son's firm, but he is disclosing this for the record. Mr. Clarke also noted he is friends with Dr. Crosby, as well.

Mr. Clarke began review of why the Board of Adjustments was reviewing Dr. Crosby's application for solar panels. The new Senate Bill 25, passed during the latest legislative session, essentially prohibits provisions of Zoning Ordinances that attempt to regulate building design elements. In other words, Senate Bill 25 specifically states:

SECTION 1.G.S.160A-381 is amended by adding new subsections to read:"(h) Any zoning and development regulation ordinance relating to building design elements adopted under this Part, under Part 2 of this Article, or under any recommendation made under G.S.160A-452(6)c. may not be applied to any structures subject to regulation under the North Carolina Residential Code for One-and Two-Family Dwellings except under one or more of the following circumstances: (1)The structures are located in an area designated as a local historic district pursuant to Part 3C of Article 19 of Chapter 160A of the General Statutes.(2)The structures are located in an area designated as a historic district on the National Register of Historic Places.(3)The structures are individually designated as local, State, or national historic landmarks.(4)The regulations are directly and substantially related to the requirements of applicable safety codes adopted under G.S.143-138.(5)Where the regulations are applied to manufactured housing in a manner consistent with G.S.160A-383.1 and federal law.(6)Where the regulations are adopted as a condition of participation in the National Flood Insurance Program.

For the purposes of this subsection, the phrase "building design elements" means exterior building color; type or style of exterior cladding material; style or materials of roof structures or porches; exterior nonstructural architectural ornamentation; location or architectural styling of windows and doors, including garage doors; the number and types of rooms; and the interior layout of rooms. The phrase "building design elements" does not include any of the following: (i) the height, bulk, orientation, or location of a structure on a zoning lot; (ii) the use of buffering or screening to minimize visual impacts, to mitigate the Impacts of light and noise, or to protect the privacy of neighbors; or (iii) regulations adopted pursuant to this Article governing the permitted uses of land or structures subject to the North Carolina Residential Code for One-and Two-Family Dwellings.

Mr. Clarke continued and noted that Biltmore Forest is not a historic district. Mr. Clarke continued and noted that the Section 11-19 of the Town's Zoning Ordinance (regulation of roofing materials) specifically makes reference to solar panels. Mr. Clarke reads Senate Bill 25 to mean that the current regulation in your Zoning Ordinance about no solar panels on the roof is not valid under North Carolina law. Mr. Clarke noted that this was discussed with the Board of Commissioners last month. There is, however, some language in the statute which allows buffering or screening to be considered for the orientation or location of a structure on a lot in order to minimize visual impact or mitigate the impact of light and noise. Mr. Clarke believes it

is the direction of the Town Commissioners that this Board could require screening for solar panels on roofs.

Dr. Landau addressed confusion as to why solar panels are addressed into what you just read and whether that is roofing material. Mr. Clarke said it is not clear in Senate Bill 25 but it is clear in the Ordinance. The Ordinance regulates solar panels as roofing materials. Dr. Landau says this certainly lists solar panels but the fact that it is listed in there, if solar panels are not roofing materials, simply the fact that it is listed does not make it a roofing material. Mr. Clarke stated he was not saying it does but he believed the Ordinance is regulating it as a roofing material. Mr. Chandler stated the Town Ordinance is prohibiting roofing materials including solar panels not to be allowed but you are saying this new law trumps that. Mr. Clarke said he is stating the new law says local governments cannot regulate the type of building or roofing materials. Dr. Landau agreed, but says the new law does not specify solar panels. Mr. Clarke agreed. Mr. Clarke said he would be reluctant to advise the Board to prohibit solar panels under the current Ordinance because it sure makes it sound like it is a roofing material.

Mr. Clarke also noted that the previous Town Administrator had approved solar panels on existing construction. Mr. Kanipe indicated that, from his review of those cases, those solar panels were not visible from adjacent property.

Mr. Pearlman asked how they could resolve a conflict between the Town's ordinance and the state law. Mr. Clarke said the state law was holding and would preempt the Town's ordinance because the Town considered it roofing material.

Mrs. Groce asked whether it would be possible to bring a panel in for the Board to review. The applicant's representative indicated that it is more expensive but more aesthetically pleasing because it is pretty much solid black. The idea is this will make a solid black pane on a roof. We have to order these but we want to make these as aesthetically pleasing as possible.

Mr. Pearlman asked whether the Board could realistically turn down something of this nature. Mr. Clarke said yes and no - there was not much basis to reject it, but there was basis for the Board to consider its impact and whether any screening or buffering could be put in place.

Dr. Landau asked Dr. Crosby to explain his rationale behind installing the panels. Dr. Landau indicated that he did not believe it was attractive to him, and simply asked Dr. Crosby to explain his rationale. Dr. Crosby said he believed this would be an attractive feature for his home, and that he was doing this because he wanted to improve his home.

Mr. Chandler asked whether there was a chance to review the solar panel prior to approval. The representative said it was possible but it may be a couple weeks waiting period

because they are specially ordered.

Dr. Landau asked whether the Town Attorney could do more research in order to verify that his legal opinion is correct.

Chairman Goosmann asked the contractor whether they could table this until the Board could review the panel.

Dr. Crosby said that he could understand Dr. Landau's concern, and that it would have to be pleasing to him as well as the Board. Dr. Crosby agreed to table the matter until the next month until they can review the panel. Dr. Crosby agreed to table the proposal.

HEARING (Evidentiary):

David and Laura Bourne, 27 Hemlock Road, were called forward and sworn in by Chairman Goosmann.

Lynn Kieffer shepherded the discussion regarding the Bourne's home proposal. Mrs. Kieffer invited the applicants to present their changes from the original proposal. Mr. Hutch Kerns, landscape architect, began reviewing the revised plans. Mrs. Kieffer noted that the garage was attached in this revised plan, whereas previously it was a detached garage. Mr. Kerns noted there were three accessory structures: a decorative fence, pool and decking, and retaining wall that included a stone chimney and water feature.

Dr. Landau asked about the decorative fence in the front yard, and Mr. Kerns indicated that this was a 3 foot high split rail type fence.

Mr. Pearlman asked what the hardships were in regards to the variance requests. Mr. Kerns indicated that the retaining wall in the back was designed to prevent additional clearing. Mr. Clarke said the law does not really describe hardship, it talks about unnecessary hardship resulting from strict application from the Ordinance. It also talks about things being peculiar to the location such as size or topography. You can grant a variance for unnecessary hardship as a result from strict application of the Ordinance. Mr. Pearlman said we are obligated to follow the statutory rules. So, if there is a hardship, then we need to hear the argument here. Mrs. Kieffer said this is a 1.62 acre lot. Mr. Clarke indicated that the Board had previously approved more accessory structures than this on prior applications. Mr. Pearlman asked whether any neighbors had opposed this proposal. Mrs. Kieffer said we have some neighbors here and asked for objections or comments.

Mrs. Merry Jenkins, 25 Hemlock Road, was sworn in as a neighbor to provide any feedback. Mr. Kerns reviewed the proposal and that the applicants had changed the plan in order to accommodate some prior concerns from the neighbor and Board. Mrs. Kieffer said the view of the garage was reduced.

Dr. Landau stipulated that he was comfortable with these accessory structures and the benefit that they provide to the neighborhood, and that previous variances were approved in respect to the new construction that were appropriate to the home.

Mr. Pearlman agreed that there was not anything objectionable from his viewpoint, but only that the ordinance as written prohibited them from clearly defining what was a variance or not. Mr. Clarke also said the Ordinance is written for a different time. Mr. Pearlman said it is not up to this Board to make a decision. Mrs. Kieffer said the building material for this fence is like a stacked split rail under 3 feet.

Mr. Bourne referenced the 20 foot horse easement on the rear of the property and the concern from some additional neighbors who wanted privacy from that trail. Mr. Bourne said he did not want a fence to deny people entrance, but did want to utilize the stone wall to help define the rear edge of their property. Mr. Chandler indicated that this would be an effective barrier. Dr. Landau read from their application and noted that the wall was designed to help preserve some trees.

Mrs. Kieffer asked if the rationale for taking the cover away from the pool was in order to be under the maximum roof coverage requirement. Mr. Bourne said yes, that after attending the last meeting, he understood the importance of staying underneath the maximum roof coverage allowance. Mr. Bourne indicated that he did not want to be over this maximum roof coverage requirement and directed the architect to resubmit the plans showing the pool without a cover.

Mr. Chandler asked Mrs. Jenkins if she was satisfied with the plan. Mrs. Jenkins said she appreciated the change in orientation for the home and did want to make sure Mr. & Mrs. Bourne understood the issue with storm water coming down the road. Mr. Kerns then referenced the specific plans intended to protect the neighbors from runoff and ensure that it is all treated on site.

Mr. Pearlman asked whether the runoff plan as proposed by the landscape architect could be included within the permit approval. It was determined this could be included.

Mr. Chandler asked whether additional buffering would be planted if necessary for the additional three accessory structures. Mr. & Mrs. Bourne agreed to this.

DELIBERATION & DETERMINATION

Mrs. Kieffer recited the facts and detailed the specific Conditional Use and Variance requests. David and Laura Bourne of 27 Hemlock Road are requesting a Conditional Use permit request for three accessory structures. The outdoor lap pool with the decking, the back stone wall encompassing the fireplace and the water feature and natural fencing in the front yard. They are also requesting two variances; one for fencing in the front yard and then exceeding the maximum number of accessory structures.

There were no additions to the facts from the applicants, no further deliberation from the Board, and one question from the Board.

There was a comment from the Board asking whether this would set a precedent regarding the number of accessory structures. Mr. Clarke indicated that variances for accessory structures were approved previously for new construction. Mrs. Kieffer and Mrs. Groce each commented that there were also variances and conditional use permit requests denied. Chairman Goosmann indicated that the applicants had been before the Board previously and modified their plan.

I, Rich Landau move that a Conditional Use Permit and Variance request be granted to David and Laura Bourne of 27 Hemlock Road for the facts that had been stated and that the Conditional Use Permit for three accessory structures and a Variance for exceeding the maximum number of accessory structures and a Variance for approval of fencing the front yard. The facts and findings as recited by Lynn Kieffer 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, Dr. Landau 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.

The motion for a Conditional Use Permit and Variance was seconded by Mr. Pearlman and unanimously approved.

Conditional Use Permit was approved.

Chairman Goosmann asked again for Shane Robichaud and Lauren Bradley. They were not present so the item was referred to next month's meeting.

HEARING (Evidentiary):

John Yurko was now present and came forward to be sworn in on behalf of Mrs. Debra Stonecipher, 15 East Forest Road. Mr. Yurko was asked whether he would consider tabling the matter, and indicated that he would like to proceed if possible due to some tree cutting coordination with a neighboring property owner.

Chairman Goosmann indicated that he would like to hear from the Board regarding the project and whether to move forward. The Board agreed to move forward with hearing the project.

Dr. Landau shepherded the case and said the applicant would like to construct a fence on the perimeter of their property. Some of the fence is on the property line, and the project also includes two gates and four columns at the entrance to the property from East Forest and Forest Roads. Dr. Landau asked the applicant to begin their presentation of the project. Mr. Yurko reviewed the prior approved variances and conditional use permits from last month's meeting. Mr. Yurko indicated that the owner wanted to increase security for the property, and noted that there was a creek and pond on the rear of the property that the owners were concerned with as it related to liability. Mr. Yurko noted that the location of the fence was generally determined by the large trees on the property. Mr. Yurko noted that there were approximately eight dead white pine trees on the eastern boundary along East Forest Road. Mrs. Kieffer asked whether the trees had been approved. Mr. Kanipe replied that they had not been approved, and regardless of the outcome of the Board's decision, the trees would still need to be approved for removal. Mr. Chandler asked Mr. Yurko what the hardship would be. Mr. Yurko said I think it is liability concern because of presence of the pond.

Mrs. Kieffer asked about the total footage of the fence, and Mr. Yurko indicated it was 1,550 linear feet of fence.

Mrs. Groce indicated her belief that this would change the feel of the neighborhood and change the neighborhood. Mrs. Kieffer indicated that during the previous permit approvals for the pool, Mr. Yurko had indicated that small fence around the pool would be requested, and this has now changed. Mr. Yurko indicated that yes, it was a different proposal than previously

discussed.

Dr. Landau reviewed the Board's take on fencing, and how generally it was hoped for that the fencing would be within the setback.

Mr. Jim Groce asked a question about what the Board calls the front of this property. Mr. Kanipe indicated that from the Town's perspective the front was East Forest Road, and in this specific case, the fence was within the entirety of the front, rear, and side yard setbacks.

Mr. Groce indicated his belief that this would set a clear precedent to completely fence any property within Biltmore Forest. He lives across from this property and believes it would harm the neighborhood. Mr. Groce does not believe there is a hardship present, since the pond and creek were there previously and the creek is very dry as it is. Mr. Groce also said that it destroyed the calming effect of the neighborhood.

Mrs. Sherie Groce indicated that her knowledge of the history of the home and landscaping plan did not support this fencing plan. It destroys the calming effect of the forest.

Chairman Goosmann asked whether the applicant was more concerned with the gate and columns or the fencing. Mr. Yurko indicated his belief that they were more interested in the gates and columns than the fencing and would like the Board to consider this.

Mrs. Mary Margaret Saunders said that the gates were more palatable than the perimeter fencing and made more sense.

Discussion ensued about whether the security gates depend on the decision related to perimeter fencing. Mr. Yurko said that the gates were designed at a natural low point where existing stone walls were already present.

Mr. Yurko agreed to bifurcate the proposal and discussion ensued on the two columns, lighting, and gates. The proposal to construct fencing around the perimeter of the property was withdrawn. Mr. Yurko designed the low profile gates and keypad and design for how the swinging gate would work. The gates are designed in order to accommodate vehicles off of the roadway. Mr. Kanipe asked about emergency vehicle access, and Mr. Yurko indicated this type of swinging gate would be designed to allow immediate access to emergency service personnel.

The columns are 5'6" with light fixtures that are 29 inches tall. The light fixtures will be on a timer, where they come on at night and go off at a certain specified hour. Mr. Chandler asked for specifics about the new requests; two columns on either side and a swinging gate on either entrance would be allowed. There is an existing garden wall into which these columns will

be located.

Mr. Chandler asked for comments from the neighbors regarding this proposal. Mrs. Groce advised that there were no objections to the columns and gates on the property.

Chairman Goosmann asked whether there were any comments or concerns from neighbors regarding the gates, columns, and lighting. All were fine with the proposal.

DELIBERATION & DETERMINATION

Dr. Landau summarized the facts as presented in regards to the columns, lighting, and swinging gates. Debra Stonecipher of 15 East Forest Road is seeking a Conditional Use Permit for construction of two electronic swinging gates and four stone pillars, two for each gate. The gates will be along Forest and E. Forest Road at the entrances of the property tying to the existing stone walls currently in place. They are also requesting a variance for construction of gates with stone pillars and exceeding the maximum number of accessory structures. There has been considerable discussion of this and no neighboring property owners have objected to the gates, pillars, and lighting.

Mr. Pearlman made a motion to approve the columns, gates, and lighting. I Lowell Pearlman make a motion that a Conditional Use Permit and Variance as requested be granted to Debra Stonecipher of 15 East Forest Road for two gates and supporting columns and that the facts recited by Rich Landau in his summation be accepted as findings of fact to support this grant. The Board has inspected the site and no neighbor 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.

Mrs. Groce seconded the motion and was unanimously approved.

The next meeting was set for Monday, October 19th at 4:00 pm. Chairman Goosmann adjourned the meeting at 6:50 pm.

ATTEST:

Greg Goosmann
Chairman

Jonathan B. Kanipe
Town Administrator