



To: Members of the Board of Adjustment, Applicants & Neighboring Property Owners  
From: Jonathan B. Kanipe, Zoning Administrator  
Date: November 4, 2015  
Re: Board of Adjustment Meeting – Monday, November 16<sup>th</sup> at 4pm

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## **Applicants:**

You or your representative **must** be present at this meeting or your application will not be reviewed.

Members of the Board of Adjustment & the Zoning Administrator may visit the property prior to the meeting.

You or your representative **must** also attend the Design Review Board meeting on the **Thursday, October 1 at 5:30pm** to complete the approval process.

**Certificates of Zoning Compliance will be issued after review and approval from the Board of Adjustment & Design Review Board.**

## **Neighbors:**

You are receiving this notice because your property is adjacent to an applicant on this month's agenda.

You may review applications & plans for the projects on this agenda at Town Hall M-F 9am-5pm.

You are invited to attend the scheduled meeting and make comment.

The following items of business are scheduled to be addressed by the Biltmore Forest Board of Adjustment on Monday, November 16, 2015 at 4:00 pm in the Town Hall Board Room.

- 1) The meeting will be called to order and roll call will be taken.
- 2) The minutes of the October 19, 2015 meeting will be presented for approval.
- 3) Hearing of Cases (Evidentiary Hearings, Deliberations & Determinations):  
  
CASE 1: Brown Crosby, 26 Stuyvesant Road, is renewing a tabled application for a conditional use permit in order to locate solar panels on the south facing roof of his home.
- 4) Adjourn

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.

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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



# ZONING APPLICATION

Required for Board of Adjustment & Design Review Board

				DATE	
PROPERTY IDENTIFICATION					
Owner Name	Property Address	PIN	Zoning	Lot Size (Acres)	
CONTACT INFORMATION					
Applicant (if not owner)		Email			
Mailing Address					
Phone (Primary)		Phone (Alt)			
PROPERTY REQUIREMENTS					
Maximum Permitted Roof Coverage		Rear Yard Setback			
Maximum Permitted Impervious Surface Coverage		Side Yard Setback			
SCOPE OF PROJECT					
Does the project include increasing roof coverage?		Yes	No		
If yes, what is the proposed roof coverage? _____					
Is the proposed roof coverage greater than the permitted maximum roof coverage?		Yes	No		
Does the project include increasing the impervious surface coverage?		Yes	No		
If yes, what is the proposed impervious surface coverage? _____					
Is the proposed impervious surface greater than the permitted maximum impervious surface coverage?		Yes	No		
Will any part of the project fall within the front yard?		Yes	No		
Will any part of the project fall within the side yard or rear yard setback?		Yes	No		
DESCRIPTION OF PROJECT					
Brief Description of Project					
Estimated Cost of Project		Estimated Completion Date			



# CONDITIONAL USE PERMIT APPLICATION

I, Benjamin Yoke (Sugar Hollow Solar Sales Manager) hereby petition the Board of Adjustment to issue a Conditional Use Permit for *Specific Conditional Use* a roof top grid tied solar electric array

for the property located at 26 Stuyvesant Road, Biltmore Forest, NC 28803 and described as follows:

## Description of the Project:

This will be a 7.84 kilowatt array consisting of 4 rows of 7 all black SolarWorld 280 watt modules. The array will appear on the Crosby home's South roof as an all black glass like rectangle (38' 8" wide and 13' 3" high). It will be aesthetically centered on the center of the roof below the central chimney. The South roof is the back roof of the house, which faces the Biltmore Forest golf course.

## Explain why the project would not adversely affect the public interest of those living in the neighborhood:

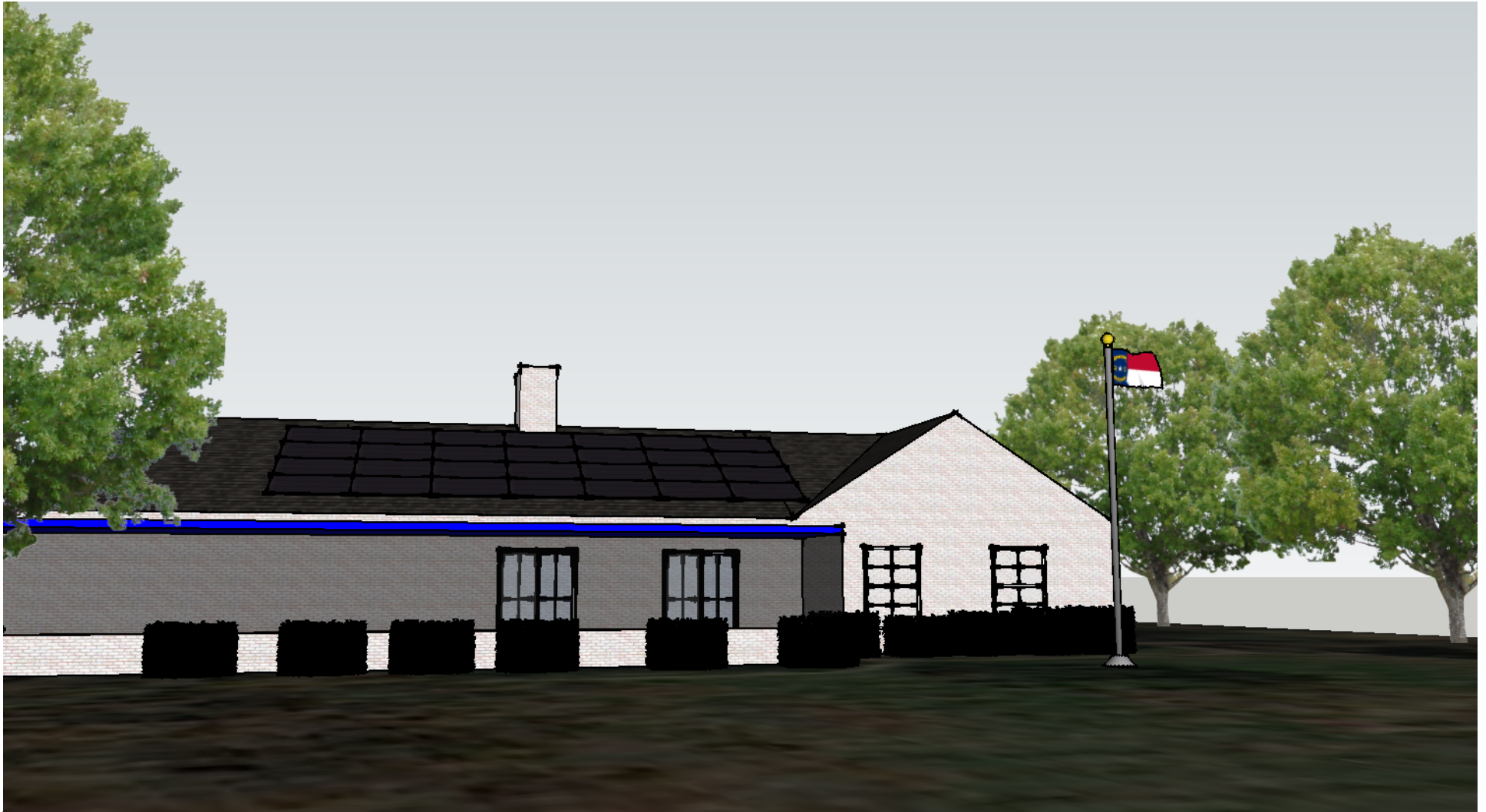
Like the solar array on the grounds of the Biltmore Estate this lovely array, to the degree that it is visible, will be an inspiration to the Biltmore Forest community. The Crosby family heats their home with low carbon footprint natural gas. They also drive an electric car. This solar system is sized such that, with the exception of the natural gas, it will aesthetically, quietly, sustainably, and beautifully meet the large majority of their household's and transportation carbon footprint.

I certify that the information presented by the undersigned in this application is accurate to the best of my knowledge, information and belief.

Benjamin Yoke  
Signature

09/10/2015  
Date





## CROSBY RESIDENCE PHOTOVOLTAIC SYSTEM

Sugar Hollow Solar, Inc.

Drawing By: Cameron Donnell

Project Information:  
Brown Crosby  
26 Stuyvesant Road  
Biltmore Forest, NC 28803

Date: 09/03/2015

# Sunmodule<sup>®</sup> Plus

## SW 280 MONO BLACK (33mm frame)



TUV Power controlled:  
Lowest measuring tolerance in industry



Every component is tested to meet  
3 times IEC requirements



Designed to withstand heavy  
accumulations of snow and ice



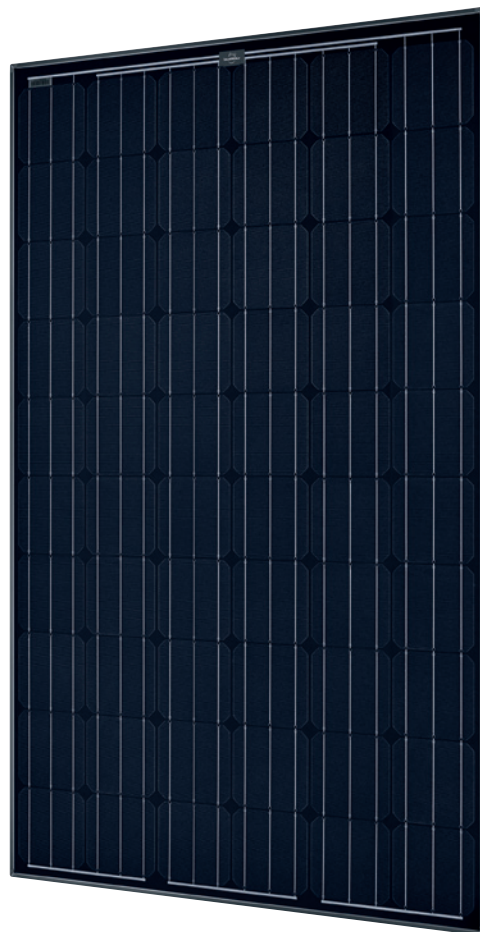
Sunmodule Plus:  
Positive performance tolerance



25-year linear performance warranty  
and 10-year product warranty



Glass with anti-reflective coating



### World-class quality

Fully-automated production lines and seamless monitoring of the process and material ensure the quality that the company sets as its benchmark for its sites worldwide.

### SolarWorld Plus-Sorting

Plus-Sorting guarantees highest system efficiency. SolarWorld only delivers modules that have greater than or equal to the nameplate rated power.

### 25-year linear performance guarantee and extension of product warranty to 10 years

SolarWorld guarantees a maximum performance digression of 0.7% p.a. in the course of 25 years, a significant added value compared to the two-phase warranties common in the industry, along with our industry-first 10-year product warranty.\*

\*in accordance with the applicable SolarWorld Limited Warranty at purchase.  
[www.solarworld.com/warranty](http://www.solarworld.com/warranty)



- Qualified, IEC 61215
- Safety tested, IEC 61730
- Blowing sand resistance, IEC 60068-2-68
- Ammonia resistance, IEC 62716
- Salt mist corrosion, IEC 61701
- Periodic inspection



- Periodic inspection
- Power controlled



# Sunmodule® Plus

## SW 280 MONO BLACK (33mm frame)



### PERFORMANCE UNDER STANDARD TEST CONDITIONS (STC)\*

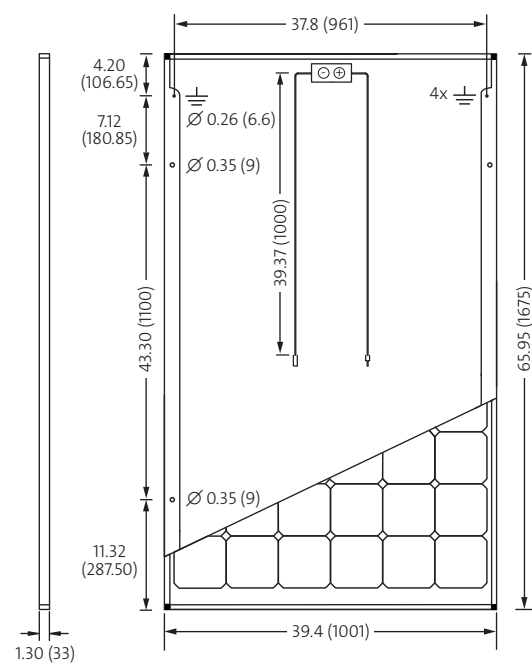
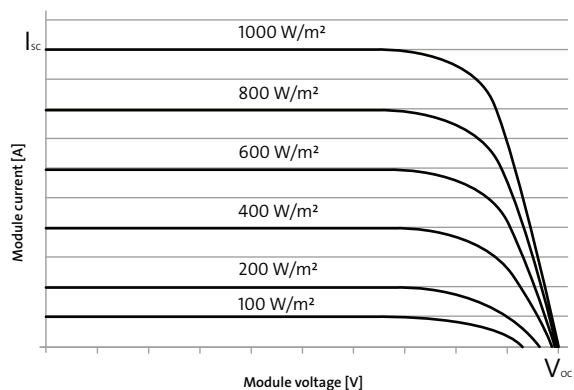
Maximum power	$P_{max}$	280 Wp
Open circuit voltage	$V_{oc}$	39.5 V
Maximum power point voltage	$V_{mpp}$	31.2 V
Short circuit current	$I_{sc}$	9.71 A
Maximum power point current	$I_{mpp}$	9.07 A
Module efficiency	$\eta_m$	16.7 %

\*STC: 1000 W/m<sup>2</sup>, 25°C, AM 1.5

1) Measuring tolerance ( $P_{max}$ ) traceable to TUV Rheinland: +/- 2% (TUV Power Controlled).

### THERMAL CHARACTERISTICS

NOCT	48 °C
TC $I_{sc}$	0.044 %/°C
TC $V_{oc}$	-0.31 %/°C
TC $P_{mpp}$	-0.43 %/°C
Operating temperature	-40°C to 85°C



### PERFORMANCE AT 800 W/m<sup>2</sup>, NOCT, AM 1.5

Maximum power	$P_{max}$	207.2 Wp
Open circuit voltage	$V_{oc}$	35.8 V
Maximum power point voltage	$V_{mpp}$	28.3 V
Short circuit current	$I_{sc}$	7.85 A
Maximum power point current	$I_{mpp}$	7.33 A

Minor reduction in efficiency under partial load conditions at 25°C: at 200 W/m<sup>2</sup>, 100% (+/-2%) of the STC efficiency (1000 W/m<sup>2</sup>) is achieved.

### COMPONENT MATERIALS

Cells per module	60
Cell type	Mono crystalline
Cell dimensions	6.17 in x 6.17 in (156.75 x 156.75 mm)
Front	Tempered glass (EN 12150)
Frame	Black anodized aluminum
Weight	39.7 lbs (18.0 kg)

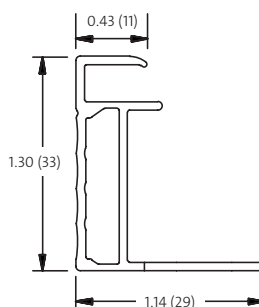
### SYSTEM INTEGRATION PARAMETERS

Maximum system voltage SC II / NEC		1000 V
Maximum reverse current		25 A
Number of bypass diodes		3
Design Loads*	Two rail system	113 psf downward 64 psf upward
Design Loads*	Three rail system	178 psf downward 64 psf upward
Design Loads*	Edge mounting	178 psf downward 41 psf upward

\* Please refer to the Sunmodule installation instructions for the details associated with these load cases.

### ADDITIONAL DATA

Power sorting <sup>1</sup>	-0 Wp / +5 Wp
J-Box	IP65
Module leads	PV wire per UL4703 with H4 connectors
Module type (UL 1703)	1
Glass	Low iron tempered with ARC



- Compatible with both "Top-Down" and "Bottom" mounting methods
- ⚡ Grounding Locations:
  - 4 locations along the length of the module in the extended flange.



MEMORANDUM  
NOVEMBER 16, 2015

To: Board of Adjustment  
From: Jonathan Kanipe, Town Administrator  
Re: Case Number 1 – 26 Stuyvesant Road  
Date: November 12, 2015

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**Case 1**

Property Owner: Dr. Brown Crosby  
Property Address: 26 Stuyvesant Road  
Zoning District: R-1  
Lot Size: 1.5 +/- acres  
Application Request: Conditional Use Permit request to install rooftop solar panels

As you will recall, Dr. Crosby initially brought this request to the Board in September. He elected to withdraw the matter at that meeting, and has subsequently asked for the Board's consideration of the issue at this meeting.

Dr. Crosby has requested permission for a conditional use permit to locate a 7.84 kW solar array on the south facing roof of his home. This solar array is comprised of four (4) rows of seven (7) all black SolarWorld 280 watt modules. Please see the product description attached to the agenda packet for more specific information on the solar panels. The panels are black and will be 38'8" wide and 13'3" high. The solar array will be centered on the south facing roof with all components being black to eliminate glare and match the color of the existing asphalt shingle roof. The applicant notes that the proposed solar array is designed to be eliminate glare, and the product specification sheet indicates that anti-reflective coating is in place for these solar panels.

Over the course of the past two months, the Board of Commissioners and Board of Adjustments have discussed the legal issues surrounding this request with the Town Attorney Billy Clarke. Mr. Clarke's final memorandum on the issue is attached to the agenda packet, and it is his belief and recommendation that the Board cannot prevent the installation of the solar panels, pursuant to new legislation approved by the North Carolina General Assembly in 2015. While we believe the new state law preempts the Town's zoning ordinance and its prohibition on solar panels, we do believe that the conditional use process for accessory structures (such as a rooftop satellite dish, for example) is applicable.

Dr. Crosby had the solar company install the panels on his home on two different occasions to allow Board members and the public the opportunity to review the panels. He has provided five notes of support for the project, two of which are from adjacent property owners. Those letters of support are attached.

The Biltmore Forest Country Club, as an adjacent property owner, did present the Town with a letter on November 10, 2015 indicating their opposition to “any addition to any resident home that is on the golf course that would create or cause a glare or would be unsightly from the golf course.”

These notes of support (mostly delivered via email) and letter from the Biltmore Forest Country Club are included in the agenda packet for your reference. Additional photos from the demonstration day are attached as well. Please let me know if you have additional questions or if there is more information which I can provide.

- Conditional use permit request to allow installation of a 7.84 kW solar array on the south facing roof of the residence.

# Memo

To: Town of Biltmore Forest Mayor Board of Adjustment and Town Manager  
From: Billy Clarke  
Date: October 14, 2015  
Re: Solar Panels

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The Town Zoning Ordinance, Section 1119, reads, in part, as follows:

Material and Color Requirements for Residential Dwelling Units

1. (b) Roofing visible from adjacent property, subparagraph 2 of this section lists the following as:

*"Prohibited Roofing Materials: tin, unpainted aluminum, galvanized steel, asphaltic roll roofing, composition rubber, EPDM or PVC single ply roofing fabric, tar and gravel, asphalt and gravel, solar panels (unless integrated into new construction)." [emphasis added]*

Senate Bill 25 (Session Law 2015-86), adds a new paragraph to G.S. 160A-381. The new paragraph reads, in part, as follows: *"(h) Any zoning and development regulation ordinance relating to building design elements ... may not be applied to any structures subject to regulation under the North Carolina Residential Code for One- and Two-Family Dwellings except under the following circumstances."* [the only exception would be if a particular structure were designated an historic structure].

"Building design elements" is defined in Senate Bill 25 to mean *"... 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."* Building design elements does not mean the use of buffering to screen or minimize visual impacts.

The Board of Adjustment, at its September meeting, considered an application for solar panels on the roof of a house located along the 8<sup>th</sup> fairway of the golf course. The BOA was concerned about the visual impact to the golf course. Some members of the board were not convinced that solar panels on the roof of a house were "building design elements." After some discussion, the applicant withdrew

the application. The Board of Adjustment asked me to look into the issue of whether or not solar panels were "building design elements."

Based on the definition of building design elements in Senate Bill 25 and the classification of solar panels as roofing materials in Section 1119, the Zoning Ordinance is regulating solar panels as building design elements. The North Carolina Building Code does not define "building design elements."

In researching the issue, I found another statute, G.S. 160A-201, which prohibits a city ordinance from *"... prohibiting or having the effect of prohibiting the installation of a solar collector..."* An ordinance can regulate the location or screening of a solar collector so long as the ordinance does not prevent the reasonable use of a solar collector for a residential property. A city ordinance may prohibit a solar collector *"...visible by a person on the ground: ... (2) On a roof surface that slopes downward toward the same areas open to common or public access that the façade of the structure faces."*

Copies of the statutes are attached along with Section 1119 of the zoning ordinance.

Section 1119. Material and Color Requirements for Residential Dwelling Units.

The Town of Biltmore Forest is a unique community which is dependent on historic continuity with its past. It is within the public interest and general welfare of the Town of Biltmore Forest to regulate the exterior appearance of residential structures, including the exterior materials and color used in constructing and reconstructing and painting buildings. Regulation of exterior materials and colors of these structures will provide protection of the aesthetic and historic character and preserve the economic stability of the town.

1. Materials. The intent of these provisions is to promote the exterior building materials which will blend with the majority of the existing residential structures and natural features of the town. As required in Section 902.01, the application for the zoning compliance certificate shall be accompanied by the description of the materials to be used for the exterior siding and roofing materials.

(a) Siding:

- 1) Permitted exterior siding materials: painted or stained wood shingles or clapboards, stone and/or brick masonry, stucco, exterior insulation and finish system (EIFS), pre-painted aluminum or heavy gauge vinyl to resemble clapboards, pre-cast concrete panels, fiber cement siding, cultured/cast stone, or as approved by the Design Review Board.
- 2) Prohibited exterior siding materials: exposed or painted concrete masonry units, light gauge vinyl siding, unpainted aluminum siding, exposed or painted concrete, paper or wood composition board, permastone or faux stone masonry, plywood (unless board and batten), asphalt shingles, ceramic tile (glazed wall tile, ceramic mosaic tile, natural clay tile, etc.), sheet glass or glass block (not to include glass used for windows, sunrooms or conservatories), glazed brick.

(b) Roofing visible from adjacent property:

- 1) Permitted roofing materials: asphalt/fiberglass shingles, cedar shakes or shingles, clay or concrete tile, slate, copper, factory painted metal shingles or standing seam with concealed fasteners, or as approved by the Design Review Board.
- 2) Prohibited roofing materials: tin, unpainted aluminum, galvanized steel, asphaltic roll roofing, composition rubber, EPDM or PVC single ply roofing fabric, tar and gravel, asphalt and gravel, solar panels (unless integrated into new construction).

2. Color. The intent of these provisions is to promote colors which blend with the existing structures and preserve the existing visual environment. It is further the intent of these regulations to prevent exterior paints or stains which are distracting and present inappropriate color contrast to the surrounding natural and built environment.



GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

SESSION LAW 2015-86  
SENATE BILL 25

AN ACT TO CLARIFY WHEN A COUNTY OR MUNICIPALITY MAY ENACT ZONING  
ORDINANCES RELATED TO DESIGN AND AESTHETIC CONTROLS.

The General Assembly of North Carolina enacts:

**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.

Regulations prohibited by this subsection may not be applied, directly or indirectly, in any zoning district, special use district, conditional use district, or conditional district unless voluntarily consented to by the owners of all the property to which those regulations may be applied as part of and in the course of the process of seeking and obtaining a zoning amendment or a zoning, subdivision, or development approval, nor may any such regulations be applied indirectly as part of a review pursuant to G.S. 160A-383 of any proposed zoning amendment for consistency with an adopted comprehensive plan or other applicable officially adopted plan. 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.

(i) Nothing in subsection (h) of this section shall affect the validity or enforceability of private covenants or other contractual agreements among property owners relating to building design elements."

**SECTION 2.** G.S. 153A-340 is amended by adding new subsections to read:

"(l) 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. 153A-341.1 and federal law.
- (6) Where the regulations are adopted as a condition of participation in the National Flood Insurance Program.

Regulations prohibited by this subsection may not be applied, directly or indirectly, in any zoning district, special use district, conditional use district, or conditional district unless voluntarily consented to by the owners of all the property to which those regulations may be applied as part of and in the course of the process of seeking and obtaining a zoning amendment or a zoning, subdivision, or development approval, nor may any such regulations be applied indirectly as part of a review pursuant to G.S. 153A-341 of any proposed zoning amendment for consistency with an adopted comprehensive plan or other applicable officially adopted plan. 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.

(m) Nothing in subsection (l) of this section shall affect the validity or enforceability of private covenants or other contractual agreements among property owners relating to building design elements."

**SECTION 3.** This act is effective when it becomes law. The act clarifies and restates the intent of existing law and applies to ordinances adopted before, on, and after the effective date.

In the General Assembly read three times and ratified this the 10<sup>th</sup> day of June, 2015.

s/ Daniel J. Forest  
President of the Senate

s/ Tim Moore  
Speaker of the House of Representatives

s/ Pat McCrory  
Governor

Approved 10:00 a.m. this 19<sup>th</sup> day of June, 2015



1 of 1 DOCUMENT

General Statutes of North Carolina  
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\*\*\* Statutes current through the 2014 Regular Session \*\*\*

CHAPTER 160A. CITIES AND TOWNS  
ARTICLE 8. DELEGATION AND EXERCISE OF THE GENERAL POLICE POWER

Go to the North Carolina Code Archive Directory

*N.C. Gen. Stat. § 160A-201 (2015)*

§ 160A-201. Limitations on regulating solar collectors

(a) Except as provided in subsection (c) of this section, no city ordinance shall prohibit, or have the effect of prohibiting, the installation of a solar collector that gathers solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, or generating electricity for a residential property, and no person shall be denied permission by a city to install a solar collector that gathers solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, or generating electricity for a residential property. As used in this section, the term "residential property" means property where the predominant use is for residential purposes.

(b) This section does not prohibit an ordinance regulating the location or screening of solar collectors as described in subsection (a) of this section, provided the ordinance does not have the effect of preventing the reasonable use of a solar collector for a residential property.

(c) This section does not prohibit an ordinance that would prohibit the location of solar collectors as described in subsection (a) of this section that are visible by a person on the ground:

- (1) On the facade of a structure that faces areas open to common or public access;
- (2) On a roof surface that slopes downward toward the same areas open to common or public access that the facade of the structure faces; or
- (3) Within the area set off by a line running across the facade of the structure extending to the property boundaries on either side of the facade, and those areas of common or public access faced by the structure.

(d) In any civil action arising under this section, the court may award costs and reasonable attorneys' fees to the prevailing party.

N.C. Gen. Stat. § 160A-201

**HISTORY:** 2007-279, s. 1; 2009-553, s. 1.

**NOTES; LOCAL MODIFICATION.** --Town of Carrboro: 1987, c. 476, as added by 2009-427, s. 1.

**EFFECT OF AMENDMENTS.** --Session Laws 2009-553, s. 1, effective December 1, 2009, substituted "residential property" for "detached single-family residence" twice in the first sentence of subsection (a) and at the end of subsection (b); and added the last sentence in subsection (a).

Nov 10, 2015

Brown Crosby

re: 26 Stuyvesant Road

Brown:

This will confirm that Janet and I have no objection to your Application (now pending before the Board of Adjustment) to install solar panels on the south portion of your roof.

Best wishes,

Ken Kelly

---

## Jonathan Kanipe

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**From:** Sharon Miller <sharongigi@bellsouth.net>  
**Sent:** Thursday, November 12, 2015 11:16 AM  
**To:** Jonathan Kanipe  
**Subject:** Re: Solar Panel Photos  
**Attachments:** image002.jpg; ATT00001.htm; 01\_View from Bunker Edge.jpeg; ATT00002.htm; 02\_View from Cart Path.jpeg; ATT00003.htm; 04\_View from Side of Front Yard.jpeg; ATT00004.htm; 05\_Close View of Panels.jpeg; ATT00005.htm; 05\_View from Yard.jpeg; ATT00006.htm; 06\_Close Up Front View of Panels.jpeg; ATT00007.htm; 07\_Extreme Close Up of Panels.jpeg; ATT00008.htm; 09\_Video Driving Northbound on Stuyvesant Rd.MOV; ATT00009.htm

Thanks you! They came thru and We have no problem with the panels, in fact, we would love to have panels but our 75 year old slate roof is probably not to be messed with.

**Sharon Miller**  
[sharongigi@bellsouth.net](mailto:sharongigi@bellsouth.net)  
828 318-2282  
9 Fairway Place  
Asheville,NC 28803  
or  
222 Broad Street  
Georgetown,SC 29440

On Nov 10, 2015, at 11:49 AM, Jonathan Kanipe <[jkanipe@biltmoreforest.org](mailto:jkanipe@biltmoreforest.org)> wrote:

Good Morning Mrs. Miller,

Thank you for your email. I have attached the photos that were originally sent over to Dr. Crosby. If for some reason these do not come through, please let me know and I will work on another way for you to view them.

Thanks again for touching base, and have a great day.

## Jonathan Kanipe

---

**From:** Brown <drcrosby60@bellsouth.net>  
**Sent:** Monday, November 9, 2015 3:34 PM  
**To:** Jonathan Kanipe  
**Cc:** Donnell Cameron; Grey Nelson; Yoke Benjamin  
**Subject:** Fwd: Solar Panel Photos

The Millers are, of course, next door.  
Thank you for distributing, Jonathan.

"Sugar Hollar Solar" has agreed to come back and again place the proposed panels on the roof and be available for questions.  
They will be at my home, 26 Stuyvesant Road, day after tomorrow, Wednesday, November 11 th, 12 noon until 2 pm. Should be a beautiful day!  
I know not all Board Members were in town before.

Again, thank you very much!!

Sent from my iPhone and please ignore typos

Begin forwarded message:

**From:** Sharon Miller <sharongigi@bellsouth.net>  
**Date:** November 8, 2015 at 7:49:14 PM EST  
**To:** Brown <drcrosby60@bellsouth.net>  
**Subject:** Re: Solar Panel Photos

We are thrilled with the panels! We are very envious that you have the roof to make use of the sun! If we had the chance to do it we would do it! Good for you!

Sent from my iPhone

On Nov 8, 2015, at 3:51 PM, Brown <drcrosby60@bellsouth.net> wrote:

Sharon and Hezzy, i forward pictures taken by Jonathan Knipe.  
Glen Kelly was over when these panels were placed for review, and is comfortable with proceeding with the installation.  
Yes, i think Biltmore Forest is ready!!

Sent from my iPhone and please ignore typos

Begin forwarded message:

**From:** Jonathan Kanipe <jkanipe@biltmoreforest.org>  
**Date:** October 23, 2015 at 4:42:50 PM EDT  
**To:** Brown <drcrosby60@bellsouth.net>  
**Subject:** FW: Solar Panel Photos

Hi Dr. Crosby,

## Jonathan Kanipe

---

**From:** Town Hall  
**Sent:** Wednesday, November 11, 2015 3:24 PM  
**To:** Jonathan Kanipe  
**Subject:** FW: Solar instalation

-----Original Message-----

**From:** Brown Crosby [mailto:browncrosby@gmail.com]  
**Sent:** Wednesday, November 11, 2015 3:07 PM  
**To:** Town Hall <townhall@biltmoreforest.org>  
**Subject:** Solar instalation

Jonathan, John and Darline McNabb, 17 Eastwood, are across 2 fairways, but would be able to see the panels.  
I attach his favorable response.

Brown I am on my way to Tulsa for a bd mtg. I will be back this Friday and will work in a nite. I have absolutely no problems. Just not much time right now. All the best. J.

Sent from my iPhone and please ignore typos



## Jonathan Kanipe

---

**From:** Brown <drcrosby60@bellsouth.net>  
**Sent:** Wednesday, November 11, 2015 12:59 PM  
**To:** Jonathan Kanipe  
**Subject:** Fwd: Solar

Jonathan for our file  
Thank you

Sent from my iPhone and please ignore typos

Begin forwarded message:

**From:** "Glenn Wilcox, Sr." <gwwilcox@wilcoxtravel.com>  
**Date:** November 11, 2015 at 12:52:50 PM EST  
**To:** "Brown" <drcrosby60@bellsouth.net>  
**Subject:** RE: Solar

Brown:

The following can be used at your hearing on Monday November 16.

To Whom It May Concern:

Brown Crosby at 26 Stuyvesant Rd, wishes to install Solar Panels on his roof. On November 11, I viewed a demonstration of the panels on his roof. His roof has black shingles and the panels are black, so they are hardly noticeable.

I strongly recommend and agree with the panel installation.

Sincerely,

Glenn W. Wilcox, Sr.  
418 Vanderbilt Rd  
Asheville NC 28803  
828-253-1003

## Jonathan Kanipe

---

**From:** Town Hall  
**Sent:** Thursday, November 5, 2015 3:54 PM  
**To:** Jonathan Kanipe  
**Subject:** FW: Town of Biltmore forest

-----Original Message-----

From: Brown Crosby [mailto:browncrosby@gmail.com]  
Sent: Thursday, November 5, 2015 2:55 PM  
To: Bob Weiler <bobw@fugazync.com>  
Cc: Town Hall <townhall@biltmoreforest.org>  
Subject: Re: Town of Biltmore forest

Bob, many thanks!!  
I will forward this on to Town Manager, Jonathan Knappe

Sent from my iPhone and please ignore typos

> On Nov 5, 2015, at 1:52 PM, Bob Weiler <bobw@fugazync.com> wrote:

>  
> TO WHOM IT MAY CONCERN  
>  
> My neighbor, Brown Crosby at 26 Stuyvesant Rd, wishes to install Solar Panels on his roof.  
> My wife and I viewed a demonstration of the panels on his roof last week.  
> His roof is black shingles and the panels are black: so, they are hardly noticeable.  
>  
> I strongly recommend and agree with this panel installation.  
> It increases the appeal of Biltmore Forest to potential purchasers in The Forest.  
> We appear forward looking and progressive.  
>  
> Thank you for considering our hardy support, Robert and Virginia  
> Weiler  
> 3 Amherst Rd  
>  
>

# Biltmore Forest Country Club



Mr. George Goosmann  
Mayor  
Town of Biltmore Forest

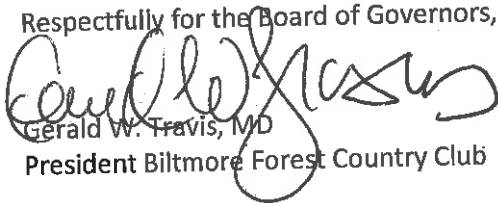
Dear George,

The Town of Biltmore Forest and the Biltmore Forest Country Club have enjoyed a long history and ongoing relationship that has been wonderful for generations of residents and club members alike. Part of the success is due to the covenants, rules, and regulations that have been established to guide our club and community.

Biltmore Forest CC would like to go on record that we would oppose any addition to any resident home that is on the golf course that would create or cause a glare or would be unsightly from the golf course. The Board of Adjusters has done a great service to the community over the years addressing these issues. The Club fully understands and appreciates that the Town of Biltmore Forest must abide by all federal, state, and county statutes.

Thank you in advance for all of your consideration.

Respectfully for the Board of Governors,

  
Gerald W. Travis, MD  
President Biltmore Forest Country Club









