

MINUTES OF THE BOARD OF ADJUSTMENT MEETING  
HELD MONDAY, APRIL 25, 2016

The Board of Adjustment met at 4:00 p.m. on Monday, April 25, 2016.

Members present: Goosmann, Landau, Kieffer, Pearlman, and Chandler. Mr. Jonathan Kanipe, Zoning Administrator, was present. 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. David Nelson  
Mrs. Martha Barnes Nelson  
Mr. George Morosani  
Mr. Julian Moore  
Mr. Curtis Foltz  
Mrs. Donna Foltz  
Mr. Grant Rehder  
Mr. Gary Foss  
Mr. David Schroeder  
Mrs. Marcia Schroeder  
Mr. William Morrison  
Mrs. Sherri Morrison

The minutes from March 21, 2016 were amended to correct the name of Fred Koon, contractor for the Woods at 12 Hemlock Road. Motion was made to accept the minutes as amended by Mr. Lowell Pearlman and to approve the meeting minutes from March 21, 2016. The motion was seconded by Mrs. Lynn Kieffer and unanimously approved.

NEW BUSINESS:

Mr. David Nelson and Mrs. Martha Barnes Nelson are requesting an extension for a Zoning Permit for 100 Chauncey Circle. There was not enough time during the six month window and they requested an extension.

Chairman Goosmann asked for a motion on this matter. Motion was made by Mr. Robert Chandler and seconded by Dr. Richard Landau and was unanimously approved.

HEARING (Evidentiary):

Mr. George and Judith Morosani of 9 Fir Tree Lane is requesting a Conditional Use Permit and Variance for the use of a deer fence on the side rear of the property. Mr. Lowell Pearlman shepherded the discussion.

Mr. George Morosani went through his plans for a deer fence proposal on the rear and side yard of the home. Mr. Pearlman asked Mr. Morosani to provide explanation of the deer fence request. Mr. Morosani indicated that he owned the property for approximately nine (9) years, and during that time, they have maintained an electric fence. Currently, the electric fence is not working very well and is not effective.

Dr. Landau asked about the existing posts along the side and rear property line, and Mr. Morosani indicated that this was a similar fence as to what Mr. George Goosmann has on his property.

Mr. Morosani further indicated that this fence would replace an older deer fence that was taken down, and it would expand upon an existing deer fence that is electrified. Mr. Goosmann asked whether Mr. Morosani would be willing to buffer if necessary. Mr. Morosani indicated it was currently buffered well, but that he was willing to screen more if necessary.

DELIBERATION & DETERMINATION

There were no questions or comments from the audience regarding this proposal. Mr. Pearlman recited the facts of the case. Mr. George and Judith Morosani of 9 Fir Tree Lane are requesting a Conditional Use Permit and Variance to allow for replacement of a deer fence and to expand the existing electric fence. They have agreed to buffer the area if needed. Mr. Morosani agreed with the recitation of facts.

Mrs. Lynn Kieffer made a motion to approve the Conditional Use Permit for the deer fence and Variance for installation within the side and rear yard setbacks. Mrs. Kieffer moved that a Conditional Use Permit and Variance as requested be granted to Mr. George and Judith Morosani of 9 Fir Tree Lane. A Conditional Use Permit and Variance for a deer fence and the facts as recited by Lowell Pearlman and his summation be accept as findings of fact to support this grant. The Board has inspected this site and no neighboring property owner has objected. Further, Mrs. Kieffer moved 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 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, Mrs. Kieffer moved that granting the Variance based upon the foregoing findings of fact, 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 was seconded by Mr. Pearlman. There were no additional questions. The motion passed unanimously.

### HEARING (Evidentiary):

Mr. Julian Moore was present on behalf of Michael Freeman, 19 Brookside Road, in regards to a deer fence application. The application was for a Conditional Use Permit and Variance for the side and rear yard. Mrs. Kieffer shepherded the discussion.

Mr. Moore indicated that this was a mesh deer fence that was six (6) feet high with flat black paint. Mr. Moore indicated the fence would begin on the left side of the property line within the setback near the retaining wall and the large Nellie Stevens Hollies that are present there. The rationale for the Variance was due to the invisibility of the fence in the placement between the existing vegetation. The deer fence in the rear yard would be compliant with the rear fence setback. Mr. Moore indicated that the Freemans would be willing to buffer if anyone ever built on the property in the rear of 19 Brookside Road.

### DELIBERATION & DETERMINATION

Mrs. Kieffer recited the facts of the case and noted that the proposed deer fence in the side yard setback would be built along an existing rock wall and within existing vegetation. It would be nearly invisible from the road. They are willing to buffer if there are any additional requests from neighbors regarding this matter.

Michael Freeman of 19 Brookside Road is requesting a Conditional Use Permit and Variance to install a (6) six foot deer fence along both sides and the back of their property. It will be within the (20) twenty foot setback because they already have a Variance for the rock wall which is already within that setback. It is heavily landscaped with trees along the sides and will not be visible from the front.

Dr. Richard Landau made a motion to approve the Conditional Use Permit and Variance as requested be granted to Michael Freeman of 19 Brookside Road for construction of a deer fence. The facts as recited by Lynn Kieffer and her summation be accepted as findings and facts for this grant. The Board has inspected this site and no neighboring property owner has objected.

Dr. Landau moved 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 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, Dr. Landau moved that granting the Variance based upon the foregoing findings of fact, 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 was seconded by Robert Chandler. There was no additional deliberation. The motion passed unanimously.

HEARING (Evidentiary):

Curtis and Donna Foltz of 89 Chauncey Circle were called forward in regards to the split rail fence application for a Conditional Use Permit and Variance. Representatives from Asheville

Fence Company were present and went through the rationale behind the installation of the fence. Dr. Landau shepherded the discussion.

Mr. Grant Rehder discussed the process they followed. Mr. Rehder indicated the property owners asked them to measure for a fence and obtained approval for the property through the Ramble Design Review Committee. They were unaware they had to obtain approval from the Town of Biltmore Forest.

Dr. Landau expressed concern with the fence being visible to the adjacent property. Mr. Rehder said the Ramble stated being (4) four feet off of the property line was acceptable. Mr. William Clarke stated the rear setback is (20) twenty feet. Dr. Landau was not in favor of placing a fence within the setback unless there was a topographical or structural issue. Mr. Clarke said that if you were to move (16) sixteen feet to the West, which should not be within the setback. Mr. Pearlman said the fencing material should also be approved. Chairman Goosmann asked if the property owners are willing to buffer due to objection from a property owner. Mr. Rehder said the property owners have planned on landscaping that area.

Gary Foss, 85 Chauncey Circle, is a neighbor of the property. He spoke in favor of the project and identified that the side yard where the fence was located was not on his side of the property. Dr. Landau asked whether the Asheville Fence company was able to make guarantees for the Foltzes in regards to the buffering plan. Mr. Rehder said no, but that he believed they did indeed want to buffer the project.

#### DELIBERATION & DETERMINATION

Mr. Chandler suggested getting a landscape plan before a decision was made about the fence approval. Chairman Goosmann stated two sides comply, the other side does not at the rear. Mr. Clarke stated the Board needs some justification for granting a Variance for putting a fence in the rear yard setback. Mr. Pearlman suggested delaying the request so an explanation can be given on being close to the rear and also so a landscape plan can be issued. Chairman Goosmann

suggested tabling this matter for one month and coming back to discuss matters further. Asheville Fence Company agreed.

Mrs. Kieffer said we will need to discuss the landscape plan and the fact that the fence would be stained gray to make it less obvious, we would also need to discuss the rear area.

The matter was tabled until the following month.

HEARING (Evidentiary):

Dr. David and Mrs. Marcia Schroeder, 320 Vanderbilt Road, presented her plans for an addition to an existing accessory structure. Mr. Chandler shepherded the discussion. Mrs. Schroeder went through the plans for the addition and indicated that the cabin was built by a renowned Madison County cabin builder. Mrs. Schroeder indicated that they would like to have the plumbing in place to allow for a bathroom and kitchenette for their guests and for her husband to use as a downstairs bedroom for convalescence.

Mr. Chandler went through the layout of the addition and noted that it was a 9 foot x 17 foot addition that would be on the north side and in compliance with the setbacks. There was existing buffering in place, but Mr. Chandler asked whether they would agree to buffer if necessary. Mrs. Schroeder said they intended to plant trees in this area regardless.

Mr. Pearlman asked for the hardship, and Mrs. Schroeder indicated that her husband's need to convalesce on the first floor was applicable, as was the need for running water in a detached structure.

Mr. Chandler recited the facts of the case, including the rationale for the variance and that buffering is agreeable if necessary. There were no questions from the audience.

Dr. David and Mrs. Marcia Schroeder of 320 Vanderbilt Road are looking for a Conditional Use Permit to construct an addition to existing accessory structure and a Variance request to allow

for construction of an addition. Specifically, they plan to add an addition to a log cabin on their property which is currently 322 square feet. They are adding 155 square feet bringing it to a total of 477 square feet. They are looking to match all of the materials and the design to match how it already looks. They would like to add plumbing to a building that does not already have it and to allow for rehab to allow family to be there. There will be some landscaping and they are willing to buffer with their neighbors to make it look nice.

#### DELIBERATION & DETERMINATION

Mr. Pearlman motioned for approval of the Conditional Use Permit and Variance request be granted to Dr. David and Mrs. Marcia Schroeder of 320 Vanderbilt Road to construct an addition of an existing accessory structure and the facts as recited by Robert Chandler and his summation be accepted as findings and facts for this grant. The Board has inspected this site and no neighboring property owner has objected.

Mr. Pearlman moved 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 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, Mr. Pearlman moved that granting the Variance based upon the foregoing findings of fact, 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.

Dr. Richard Landau seconded the motion. The motion passed unanimously.

HEARING (Evidentiary):

Mr. William and Mrs. Sherri Morrison of 388 Vanderbilt Road were present to discuss their proposal for a new home. Mr. Pearlman shepherded the discussion and reviewed the requests for the Conditional Use Permit related to the entrance columns and the retaining walls.

Chairman Goosmann noted for the record he has an existing relationship with the Mr. & Mrs. Morrison and will not be voting on this matter. Mr. Chandler also noted his wife was a realtor for Mr. & Mrs. Morrison but he will still be able to vote.

Mr. Robert Griffin of Griffin Architects spoke on behalf of the Mr. & Mrs. Morrison. Mr. Kanipe verified that a Variance was unnecessary in regards to the entrance columns, only a Conditional Use Permit was needed. The entrance columns were a portion of the retaining wall and those were necessary to hold the new driveway in place.

DELIBERATION & DETERMINATION

Mr. William and Mrs. Sherri Morrison of 388 Vanderbilt Road are applying for a Conditional Use Permit to construct entrance columns and a retaining wall in conjunction with a project for a house they are building at 388 Vanderbilt Road. This request has been made in the name of William P. Morrison, Trustee with William P. Morrison, Revocable Trust and Sherri M. Morrison as Trustee for the Harborview Trust.

A motion was made by Mrs. Kieffer to grant a Conditional Use Permit for retaining wall and entrance columns be granted to William P. Morrison, Trustee for the William P. Morrison

Revocable Trust and Sherri Morrison for Trustee for the Harborview Trust. The facts as recited by Lowell Pearlman and his summation be accepted as findings and facts for this grant. The Board has inspected this site and no neighboring property owner has objected.

Mrs. Kieffer moved 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 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. Richard Landau seconded the motion. The motion passed unanimously.

The meeting was adjourned at 5:46 p.m.

The next meeting of the Board of Adjustment was scheduled for Monday, May 16th, 2016 at 4:00 p.m.

ATTEST:

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Greg Goosmann  
Chairman

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Jonathan B. Kanipe  
Town Administrator