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George F. Goosmann, III, Mayor Fran G. Cogburn, Mayor-Pro Tem E. Glenn Kelly, Commissioner Doris P. Loomis, Commissioner

> Jonathan B. Kanipe, Town Manager

### MEMORANDUM

To:	Board of Adjustments Members
From:	Jonathan Kanipe, Town Manager
Re:	Board of Adjustments Case Number 3 (10 Greenwood Road)
Date:	June 14th, 2018

Request for Conditional Use Permit for an Accessory Structure Request for a Variance for Fireplace in Side Yard Setback

The applicants request a conditional use permit to replace a chain link fence with a stone wall. The location of the structure is in the side yard setback. The new structure will match an original stone retaining wall still present on the property. Replacement of existing fences and walls is currently allowed as a conditional use as long the material used for replacement is not chain-link fencing and the location is not in the front yard. The specific ordinance language is as follows:

### § 153.029 ACCESSORY STRUCTURES AND BUILDINGS.

(4) Replacement of existing fences and walls. Replacement of an existing fence or wall is a conditional use subject to the approval of the Board of Adjustment and the requirements of this zoning ordinance. An application to replace an existing fence or wall must include a photograph of the existing fence or wall, specify the type of fence or wall, include a map or sketch depicting the height and length of the fence, and state whether or not the fence is in any setbacks.

(a) Existing chain link fences may not be replaced with new chain link fences.

(b) Existing fences or walls in the front yard may not be replaced. No new fences or walls shall be allowed in the front yard.

(c) Repair of more than half of an existing fence or wall shall be considered a replacement and shall be subject to this section.

The applicants also request a variance to place a stone fireplace in the side yard setback. Under the same zoning ordinance provision provided above, it is stated that no accessory structure shall be allowed in the side yard setback. The specific text can be found below.

#### § 153.029 ACCESSORY STRUCTURES AND BUILDINGS.

(A) Accessory structures and/or necessary buildings shall not detract from nor interfere with adjacent properties. No accessory structure or building shall be constructed, erected, or located within any front yard or within any side yard or rear yard setback.

The proposed fireplace will be made of stone and will replace the original patio. According to the application, the ability to place the fireplace in the setback approximately three feet would allow it to be placed behind an existing evergreen that could serve as a buffer. This would also provide additional room for added landscaping, if requested by the Board. The applicants note that the entire project is located in the back yard and some landscaping is already present that will serve as a buffer to the patio.

# **Zoning Application**

## **Property Identification**

#### Name

Aaron AuBuchon

#### Address

10 Greenwood Road, Biltmore Forest, North Carolina 28803

Phone (828) 707-0809 Email aaron@aubuchon.biz

Zoning R-1

Lot Size (Acres) .77

**Email -Submission Verification** aaron@aubuchon.biz

## Scope of Project-Roof Coverage

Does the project include increasing roof coverage? No

Is the proposed roof coverage greater than the permitted maximum roof coverage? No

## Scope of Project-Impervious Surface

Does the project include increasing the impervious surface coverage? No

## Scope of Project-Setbacks

Does any part of the project fall within the front vard? No

Does any part of the project fall within the side/rear yard setback(s)s? Yes

An application for a variance to encroach the side/rear yard setback(s) will be required in addition to this zoning application.

## Scope of Project-Accessory Structures

buildina? Yes

**Does the project include a detached structure or** An application for a conditional use permit will bre required in addition to this zoning application.

Will there be more than the approved number of

#### accessory structures/buildings?

No

## **Project Description**

#### **Brief Description of Project**

Replacing original patio, adding outdoor fireplace (will email pictures separately), and replacing old green chainlink fence with stone wall that to match the original stone retaining wall on left side of driveway (picture to be emailed).

#### **Estimated Cost of Project**

20,000

Estimated Completion Date 7/1/2018

**Please attach any drawings, renderings, photographs or other supporting documentation.** New Stone Fence .jpg

Old Stone Wall.jpg

# **Conditional Use Permit Application**

I hereby petition the Board of Adjustment to issue a Conditional Use Permit for:

Name Aaron AuBuchon

Property Address 10 Greenwood Road

Email aaron@aubuchon.biz

Phone (828) 707-0809

**Type of Conditional Use** 802.07 Accessory Buildings

**Email-Submission Verification** 

aaron@aubuchon.biz

#### **Description of Project**

Replacing original stone patio with new flagstone patio, new fireplace and replacing old chain link fence that faces the street with stone wall that matches the retaining wall on left side of driveway

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

The entire project is in the back yard and we have landscaping that buffers any neighbors views. The only visible work from the road is 1) replacing the existing green chainlink fence with a stone wall which we believe is a great improvement to the history of the home and 2) the addition of an outdoor stone fireplace.

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

Signature

**Date** 5/15/2018

# **Variance Application**

I hereby petition the Board of Adjustment for a variance(s) from the provisions of the Zoning Ordinance for the real property stated below.

#### Name Aaron AuBuchon

Property Address 10 Greenwood Road

Email aaron@aubuchon.biz

Phone (828) 707-0809

Email-Submission Verification aaron@aubuchon.biz

### Variance to Zoning Ordinance Section(s) (Select all that apply)

1103 Required Yards & Other Spaces

N.C.G.S. 160A-388(D) requires that the Board of Adjustments shall vary the provisions of the Zoning Ordinance only upon a showing of ALL the following:

1) Unnecessary hardship would result from the strict application of the ordinance.

2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that cicumstances exist that may justify the granting of a variance shall not be regarded as a self-created harship.

4) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

#### State specific hardship that results in variance request to not comply with the Zoning Ordinance

With the original stairs and gate opening the new fireplace would fall directly in front of the gate which would cause the most noticeable from the road. Our three foot variance request would allow the fireplace to be hidden behind an existing evergreen and enable us to do additional landscaping to mask the fireplace if required. The proposed fireplace would be hidden by a 10-12 foot evergreen hedge that is on our property. Please see pictures in separate email.

#### State what conditions are peculiar to the property that require a variance.

The 100 year old original stairs and pathway.

#### Did the harship result from actions taken by the applicant or proprty owner?

The fireplace is a request to enhance the usability of the backyard, but we are trying to position it based on the original stairs, pathway and gate.

### State how the requested variance is consistent with the spirit, purpose, and intent of the ordinance.

Trying to maintain the original stairs and pathways which match the original stone walls present on the property.

In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with the Zoning Ordinance. Violations of the provisions of the variance granted including any conditions or safeguards which are part of the granting of the variance, shall be deemed a violation of the Zoning Ordinance. I hereby certify that the information set forth above is true and accurate to the best of my knowledge.

Signature Date 5/16/2018















