

MINUTES OF THE BOARD OF ADJUSTMENT MEETING
HELD MONDAY, NOVEMBER 18, 2019.

The Board of Adjustment met at 4:00 p.m. on Monday, November 18, 2019.

Members present: Goosmann, Groce, Kieffer, Chandler, and Pearlman. Mr. Jonathan Kanipe, Town Manager, Mr. William Clarke, Town Attorney, and Ms. Adrienne Isenhower, Town Planner, were also present.

Chairman Greg Goosmann called the meeting to order at 4:00 p.m.

Mr. Goosmann swore in the following:

Mr. Jonathan Kanipe
Ms. Adrienne Isenhower
Mr. Bruce Johnson
Ms. Joyce Young
Ms. Martha Barnes

A motion was made by Mr. Lowell Pearlman to approve the minutes from October 14, 2019 as amended. Ms. Rhoda Groce seconded the motion. The minutes were approved unanimously.

HEARING (Evidentiary):

The first matter is regarding a Special Use Permit for property at 101 Chauncey Circle for a 20x40 in ground swimming pool and safety fence surrounding the pool. Ms. Rhoda Groce shepherded the discussion. Mr. Bruce Johnson, architect, represented the property owners.

Mr. Johnson stated the square footage for the house was just over 3,000 square feet. There is no neighbor to the north, the house to the west faces Valley Springs Road and the Blue Ridge

Parkway, Chauncey Circle is on the South side, and there is one neighbor to the east. The four-foot fence starts at the back west corner of the house and follows the setback line to the northeastern corner to enclose the outdoor area with the pool patio. There are two gates. This is a standard black aluminum pool fence that is required by the state building code. Ms. Groce asked for the record if the fence was located in compliance with the setback, and Mr. Johnson confirmed this.

Mr. Johnson presented a new drawing for the fence layout that was entered into the record.

Ms. Groce asked if new planting was required per the landscaping plan. Mr. Johnson indicated the scrub materials that currently exist will be removed and then additional plantings will be installed all along Valley Springs Road and Chauncey Circle. Mr. Johnson also indicated that they hoped to install buffering along the sewer line.

Ms. Kieffer asked about the retaining wall that Mr. Johnson referenced that would be supporting the retention of multiple large trees on the lot. Mr. Kanipe indicated that this did not require a permit because the retaining wall was part of the new house.

DELIBERATION AND DETERMINATION:

Ms. Rhoda Groce recited the facts. Greg and Jessica Barr of 101 Chauncey Circle are requesting a Special Use Permit for a 20x40 in ground swimming pool and safety fence surrounding the pool. The pool is located in the rear yard and does not encroach upon any setback. The pool and the fence will be screened with landscaping. The owners will be willing to landscape further if requested by neighbors. There were no additions to the facts.

Ms. Lynn Kieffer made a motion to approve the Special Use Permit for Mr. Greg Barr and Ms. Jessica Barr of 101 Chauncey Circle for a 20x40 in ground swimming pool with a 4 foot safety fence and the facts as recited by Rhoda Groce and her summation be accepted as findings and facts to support this grant. The Board has inspected the site and no neighboring property owner has objected. Ms. Kieffer further moved that granting this Special 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 153.110 (C)(2-3) of the above Ordinance. The applicant has been informed that he/she is to report to the Zoning Administrator within seven (7) days of completion of the project in order that the Zoning Administrator can determine that the project has been completed in accordance with plans submitted to the Town.

Mr. Pearlman seconded the motion. The motion was passed unanimously.

HEARING (Evidentiary):

A Special Use Permit request for Richard and Carrie Leader, 3 Eastwood Road, was called forward. The applicants were not present. Ms. Kieffer noted they would like to build a stone column to enclose a mailbox. It would need to be five feet back from the edge of the road. It is suggested that they would like it to be on the east side with the existing mailbox but the mail carrier suggest it be on the west side. Mr. Chandler it would make more sense to place it on the west side to keep it safer. Mr. Clarke said it needs to be five feet from the edge of the pavement so it is out of the street right of way. Mr. Pearlman said the homeowners need to be advised of these limitations. Mr. Kanipe said they would issue the homeowners a decision document that gives them the conditions as the Board approves it.

Ms. Joyce Young asked a question about the size of the structure and whether it was 38 inches by 38 inches. Mr. Clarke and Ms. Kieffer also questioned the size.

DELIBERATION AND DETERMINATION:

Mr. Pearlman made a motion to continue the request until the applicant can appear before the Board. Mrs. Kieffer seconded the motion. The motion to continue the request was passed unanimously.

The homeowners need to be present due to the many questions the Board has. Mr. Clarke said the Board could not accept telephone testimony because it is not sworn testimony.

Chairman Goosmann adjourned the meeting at 4:21pm. The next Board of Adjustment meeting was scheduled for Monday, December 16th 2019 at 4:00 pm.

Mr. Clarke referenced the quasi-judicial training that referenced comprehensive changes to land use regulations. The way it works now, the Board of Adjustment makes the decision on a permit and if the applicant is not happy with the outcome, he/she can petition for Writ of Certiorari to the Superior Court. Now they have a right to bring a separate lawsuit against the Town. There is a provision, if they can demonstrate to the Superior Court that the Board of Adjustment acted outside its authority that attorney fees could be awarded. Mr. Clarke suggested in the January meeting that these new changes be discussed with the Board.

ATTEST:

Greg Goosmann
Chairman

Jonathan B. Kanipe
Town Manager