

MINUTES OF THE BOARD OF ADJUSTMENT MEETING
HELD MONDAY, AUGUST 28, 2023

The Board of Adjustment met at 4:00 p.m. on Monday, August 28, 2023.

Mr. Greg Goosmann, Mr. Lowell Pearlman, Mr. Robert Chandler, Ms. Martha Barnes, and Ms. Rhoda Groce were present. Mr. Jonathan Kanipe, Town Manager, Mr. Tony Williams, Town Planner, Ms. Laura Jacobs, Town Clerk, Mr. Harry Buckner Public Works Director, and Mr. Billy Clarke, Town Attorney, were also present. Ms. Lynn Kieffer was not present.

Chairman Greg Goosmann called the meeting to order at 4:01 p.m.

Chairman Goosmann swore in the following:

Mr. Tony Williams

Mr. Jonathan Kanipe

Mr. Claude Sheer

Ms. Kathleen Goodwin

Ms. Elizabeth Freeman

Mr. John Judd, Jr.

Mr. Charles Owen, III

Ms. Eleanor Owen

Mr. Matthew Fusco

Mr. Chris Allen

Mr. Derek Weilbaeher
Ms. Angela Weilbaeher
Mr. Don Minton
Ms. Rebecca Lester
Ms. Emily Roberts
Mr. Barry Johnson
Ms. Heather Brown
Mr. Chris Atwater
Mr. William Wilcox
Mr. Jim Mann
Mr. Clay Mooney
Mr. Wally Hachil
Ms. Rhoda Cobb
Mr. Bill Morrison

A motion was made by Mr. Lowell Pearlman to approve the minutes as amended from July 17, 2023. Mr. Robert Chandler seconded the motion. The minutes were unanimously approved.

HEARING (Evidentiary):

The first matter discussed is for a Special Use Permit for fence replacement in an existing location at 5 Brookside Road. Ms. Martha Barnes shepherded the matter. The existing chain link fence is six feet tall and will be replaced with an eight-foot fence.

DELIBERATION AND DETERMINATION:

Ms. Martha Barnes restated the facts and said Mr. Claude Sheer is applying for a Special Use Permit to replace an existing fence. The fence will be an eight-foot oak and wire fence. The wire fencing is black. It is well screened on the back of the property.

Ms. Rhoda Groce moved that a Special Use Permit be granted to Claude Sheer of 5 Brookside Road for a replacement fence installation and the facts as recited by Ms. Barnes and her summation be supported as findings and facts to support this grant. The Board has inspected this site and no neighboring property owner has objected. She further moved the Board define 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.

Ms. Robert Chandler seconded the motion. The motion was unanimously approved.

HEARING (Evidentiary):

The second matter is for a Special Use Permit request for fence replacement in an existing location at 19 Brookside Road. Mr. Robert Chandler shepherded the matter. Ms. Elizabeth Freeman said it is black iron with a black powder coated seal. It matches the gate on the other side of the house. In the side yard there is part of a fence that has been destroyed by wildlife and it will connect to the rest of the deer fence they already have. It will be five feet tall. There will be a five-foot-tall wall gate installed to match.

DELIBERATION AND DETERMINATION:

Mr. Chandler restated the facts and said Elizabeth Freeman at 19 Brookside Road is requesting a Special Use Permit for the replacement of an existing fence in the same location. It will be forty linear feet with a five-foot-wide gate. It is in all the required setbacks.

Ms. Martha Barnes moved that a Special Use Permit be granted to Elizabeth Freeman for a replacement fence installation and the facts as recited by Robert Chandler and his summation be supported as findings and facts to support this grant. The Board has inspected this site and no neighboring property owner has objected. She further moved the Board define 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.

Ms. Groce seconded the motion and was unanimously approved.

HEARING (Evidentiary):

The third matter is for a Special Use request for an accessory structure for installation of driveway entrance columns at 46 Hilltop Road. Ms. Groce shepherded the matter. The columns are 32x32 columns that are eight feet tall with gas lighting in the center. It is not in the Town's right of way.

DELIBERATION AND DETERMINATION:

Ms. Groce restated the facts and said John and Jill Rose of 46 Hilltop Road are requesting a Special Use Permit for installation of driveway entrance columns. They are 32x32. They are eight feet tall.

Mr. Robert Chandler moved that a Special Use Permit be granted to John and Jill Rose of 46 Hilltop Road 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 this site and no neighboring property owner has objected. He further moved the Board define 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.

HEARING (Evidentiary):

The next matter is for a Special Use Permit request for an accessory structure for installation of driveway columns at 7 Greenwood Road. Mr. Lowell Pearlman shepherded the matter. They are white columns. They are six feet and six inches tall. They do not encroach within the Town's right-of-way.

DELIBERATION AND DETERMINATION:

Mr. Pearlman restated the facts and said Mr. Owen of 7 Greenwood Road is applying for a Special Use Permit for two driveway entrance columns. They are approximately 6.5' tall and will not be within the Town's right-of-way. Ms. Groce moved that a Special Use Permit be granted to Eleanor and Charlie Owen of 7 Greenwood Road and the facts as recited by Lowell Pearlman be accepted as findings and facts to support this grant. The Board has inspected this site and no neighboring property owner has objected. She further moved the Board define 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.

HEARING (Evidentiary):

The next matter is for a Special Use Permit request for 410 Vanderbilt Road to have installation of driveway entrance columns. Ms. Martha Barnes shepherded the matter. Mr. Matt Fusco represented the homeowners. The stone columns will be a combination of stucco and painted brick. There will be light fixtures affixed to the top of the columns. They will top out just under nine feet. The closest one will be placed approximately twenty-one feet from the edge of the pavement. The second column will be placed at thirty-six feet. The two columns will be eighteen feet apart.

DELIBERATION AND DETERMINATION:

Ms. Barnes recited the facts and said William and Mary Winkenwerder of 410 Vanderbilt are requesting to replace their existing lanterns with driveway columns. They will match the house. The column is approximately 6'8" with an additional two feet for the lantern. The total height will be nine feet.

Mr. Pearlman moved that a Special Use Permit be granted to William and Mary Winkenwerder of 410 Vanderbilt for columns and the facts as recited by Martha Barnes and her summation be accepted as findings and facts to support this grant. The Board has inspected this site and no neighboring property owner has objected. He further moved the Board define 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.

Ms. Chandler seconded the motion. The motion was unanimously approved.

HEARING (Evidentiary):

The next matter is for a Special Use Permit request to construct an accessory structure in the rear yard at 3 Eastwood Road. Mr. Chris Allen represented the homeowner, Teresa Brown. Ms. Teresa Brown wants to install a patio in the rear yard. It is a 20 foot by 20-foot stone patio. There will be a twenty-five-foot retaining wall on the other side. There is a small seat wall on the uphill side. Ms. Groce asked about the water feature and coy pond. Mr. Kanipe clarified this is separate from this request.

DELIBERATION AND DETERMINATION:

Mr. Chandler restated the facts. It will be a ten 10'x20' stone patio in the rear yard. The retaining wall will be 1'-3'. The project is compliant with all the setbacks.

Ms. Barnes moved that a Special Use Permit be granted to Teresa Brown of 3 Eastwood Road and the facts as recited by Robert Chandler and his summation be findings and facts to support this grant. The Board has inspected this site and no neighboring property owner has objected. She further moved the Board define 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.

HEARING (Evidentiary):

The seventh matter is for a Variance request to exceed maximum roof coverage requirement at 414 Vanderbilt Road for Angela and Derek Weilbaeher. Mr. Don Minton represented the homeowners. Mr. Pearlman shepherded the matter. They would like to add a greenhouse. Mr. Don Minton said they would like to enclose the current pergola area with a greenhouse. The overage is 604 square feet over using the current calculation method.

Mr. Pearlman asked what hardship is. The hardship is they want to do year-round gardening and would prefer not to have a garden on the golf course side. The percentage over is less than 10% which the Board has approved in the past. It is about 7.7%. It is a 265 square feet greenhouse.

DELIBERATION AND DETERMINATION:

Mr. Pearlman restated the facts and said Derek and Angela Weilbaeher at 414 Vanderbilt Road are requesting a Variance to exceed the maximum roof coverage to allow enclosing a greenhouse. It will exceed roof coverage by 604 square feet.

Ms. Rhoda Groce moved that a Variance be granted to Derek and Angela Weilbaeher of 414 Vanderbilt Road to exceed maximum roof coverage and the facts as recited by Lowell Pearlman and his summation be accepted as findings and facts to support this grant. The Board has inspected this site and no neighboring property owner has objected.

Further, she moved that granting this Variance satisfies the applicable Sections of 153.110(D) 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 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 Ms. Barnes and unanimously approved.

HEARING (Evidentiary):

The eighth matter is for a Variance request to encroach on the side yard setback for an addition at 3 Stuyvesant Crescent. Ms. Barnes shepherded the matter. Ms. Rebecca Lester would like to add a covered patio. Less than 2% of the proposed slab exceeds the coverage because their back fence makes an odd angle. They would like to screen in the entire backyard along all of the fence line.

DELIBERATION AND DETERMINATION:

Ms. Barnes restated the facts and said Rebecca Lester of 3 Stuyvesant Crescent would like to have a patio constructed at the back of their house. There will be solid screening and is two feet into the setback.

Mr. Chandler made a motion to approve a Variance at 3 Stuyvesant Crescent for Rebecca Lester and the facts as recited by Martha Barnes and her summation be accepted as findings and facts to support this grant. The Board has inspected this site and no neighboring property owner has objected.

Further, he moved that granting this Variance satisfies the applicable Sections of 153.110(D) 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 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 Ms. Barnes and unanimously approved.

Ms. Barnes seconded the motion. The motion was unanimously approved.

HEARING (Evidentiary):

The ninth matter is for a Variance request for encroachment into setbacks and Special use permits for accessory structure fence installation at 1345 Hendersonville Road(Carolina Day School). Mr. Chandler shepherded the matter. Ms. Emily Roberts said they are seeking approval to build a fence along Hendersonville Road. The fence would be along the entire East side of the property and return along the north and south ends of the property. They are only seeking approval for the fence at this time. It would be a powder coated black steel fence. Ms. Roberts showed the current entrance and exits. Ms. Roberts showed the board the plans. The fence would be eight feet high. Mr. William Wilcox said he lives at 6 Stuyvesant Crescent and he also introduced Mr. Jim Mann who lives at 8 Stuyvesant Crescent. He asked for clarification of the fence and asked if the fence would connect all the way to the building so no one would come around the fence. Ms. Roberts said the fence would not attach to the back of the building. The back of the school and the neighborhood are open. This is to control access points to Hendersonville Road. There are gates that if there were an emergency, children could run out of. Mr. Wilcox said if this proposal was accepted, would the school adhere to locking the gates and securing the back area. It is not locked and secure back there now.

Mr. Chris Atwater who is the security director for Carolina Day School explained the gate and drawings to the audience. Mr. Atwater said the gates would be secured and locked.

Mr. Clay Mooney is the property owner at 1293 Hendersonville Road and asked about the width of the electric gate. Ms. Roberts said it is a twelve-foot gate. Mr. Mooney asked if emergency vehicles would be able to get through this. They will check with the fire department before construction begins. Mr. Mooney suggests they have signage that says “employees only” because they won’t be able to turn around.

Mr. Chandler said him and his wife used to be involved with the school and his kids used to go to school at Carolina Day. Mr. Goosmann and Ms. Groce also used to be affiliated with the school.

Mr. Wilcox asked if Carolina Day School was going to get approval from the Department of Transportation before building the fence. Ms. Roberts said yes and if they don’t get the approval, they will go a different route. Mr. Mooney said people can clearly get on his property to Carolina Day School with a gap in the fence. They should consider connecting it for security purposes. Mr. Pearlman made a motion to approve a Variance at CDS for a fence and the facts as recited by Robert Chandler

DELIBERATION AND DETERMINATION:

Mr. Chandler restated the facts and said Carolina Day School at 1345 Hendersonville Road is requesting a Variance request for encroachment into setbacks and Special Use Permits for Accessory Structure Fence installation for installing a fence for security purposes. Gates would also be included. The drawings were explained to the audience. The gate would have to be at least fourteen feet wide for emergency vehicles to get through. The proposed locations are marked on the plan.

Mr. Pearlman made a motion to move a Variance request be granted to Carolina Day School at 1345 Hendersonville Road for a fence and the facts as recited by Robert Chandler and his summation be accepted as findings and facts to support this grant. The Board has inspected this site and no neighboring property owner has objected.

Further, he moved that granting this Variance satisfies the applicable Sections of 153.110(D) 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 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.

He also moved the Board define 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.

Ms. Groce seconded the motion. The motion was unanimously approved.

HEARING (Evidentiary):

The last matter is for a Variance request to encroach into the side yard setback at 7 Stuyvesant Road. Mr. Wally Hachil represented Ms. Rhoda Cobb who owns the property. The gravel path has been there for quite some time going back to 2010 that shows the existence of the path. A surveyor went out there and the path totaled 206 feet in length. It varies in width from six to eight feet. A Variance is requested for the encroachment. Ms. Cobb submitted a written proposal to the Board which they read. A Special Use Permit is also requested for this since the gravel path is also considered an accessory structure.

Ms. Groce said the gravel path looks unnatural and said his path did not exist as a gravel road in the past. Mr. Hachil said this drawing is not the finished product.

Ms. Barnes said the noise and the visual are the two issues. The landscaping is world class and this path is not consistent with the beautiful scenery.

Mr. Morrison who is the neighbor of 7 Stuyvesant said it is not a gravel driveway, it is a rock driveway. It causes a lot of noise. The lawnmower also runs more than a few days per week and is very loud going over the rock. It goes between 80-100 times over the rock per week. He has also sent the recording of the loudness to Mr. Kanipe. The previous path was dirt and didn't create any noise. It didn't bother Mr. Morrison until the rock went down. It is very loud.

Ms. Barnes said the board could refuse to grant the Special Use Permit which means they would have to pull everything up. Also, the board can approve granting the permit under certain conditions such as enough landscaping being installed for example.

Mr. Clarke said the Special Use Permit can be denied or the Special Use Permit can be issued with special conditions that are appropriate. The Special Use Permit can also be amended. The application can also be withdrawn and returned at a later date.

DELIBERATION AND DETERMINATION:

Mr. Pearlman said if the request is denied, they have to wait one year before they can come back. The homeowners decided to table the matter for one month.

The meeting was adjourned at 6:01 pm. The next Board of Adjustment meeting is scheduled for Monday, September 18, 2023 at 4:00 pm.

ATTEST:

Greg Goosmann

Chairman

Laura Jacobs

Town Clerk