

MINUTES OF THE BOARD OF ADJUSTMENT MEETING
HELD MONDAY, JUNE 19, 2023

The Board of Adjustment met at 4:00 p.m. on Monday, June 19, 2023.

Mr. Greg Goosmann, Mr. Lowell Pearlman, Ms. Lynn Kieffer, Mr. Robert Chandler, Ms. Martha Barnes, and Ms. Rhoda Groce were present. Mr. Jonathan Kanipe, Town Manager was present via Zoom. Mr. Harry Buckner, Public Works Director, Mr. Tony Williams, Town Planner, and Mr. Billy Clarke, Town Attorney were also present.

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

Mr. Goosmann swore in the following:

Mr. Tony Williams

Mr. Jonathan Kanipe

Mr. Jerry Douglas

Mr. Michael O'Buckley

Mr. James Mullins

Mr. Evan Remmes

Mrs. Alexandra Remmes

A motion was made by Mr. Lowell Pearlman to approve the minutes from May 15, 2023. Mr. Robert Chandler seconded the motion. The minutes were unanimously approved.

HEARING (Evidentiary):

The first matter discussed is for a Special Use Permit request at 24 White Oak for fence installation in the rear yard and Variance request for intrusion into the setback. Ms. Rhoda Groce shepherded the matter. Mr. Douglas said it is a small house with a small yard less than 4/10 of an acre. They want to have a fence installed because they have a dog. Mr. Douglas is requesting a Variance because of the size of the lot. It will be a powder coated black fence that will connect to a preexisting fence. It is four feet tall. The lot was surveyed, and they have clear lines of where the edges of the property are. There will be a double gate on one side and a single gate on the other side. The neighbors are supportive of the project. Mr. Douglas agreed to buffer additionally if requested by neighboring property owners.

DELIBERATION AND DETERMINATION:

Ms. Groce restated the facts and said Mr. Jerry Douglas at 24 White Oak Road is requesting a Special Use Permit for fence installation in the rear yard and Variance for intrusion into the setback. The fence is four feet tall and will connect to an existing fence. The Variance is for encroaching into the side and rear yard setback. Ms. Martha Barnes said she will make the motion on the condition that if the trees get cut down that it be replaced so the neighbors don't complain. Mr. Douglas agreed.

Ms. Barnes made a motion that a Special Use Permit and Variance be granted to Mr. Jerry Douglas of 24 White Oak Road for a backyard fence with necessary screening as required and the facts as recited by Ms. Rhoda Groce 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.

Further, she moved by 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.

Ms. Lynn Kieffer seconded the motion. The motion was unanimously approved.

HEARING (Evidentiary):

The next matter is a Special Use Permit request for 4 Fairway Place and a Variance is requested for location within the front yard setback. Mr. Lowell Pearlman shepherded the matter. Mr. Michael O'Buckley said they would like a stone wall or border at the bottom landscape on the front of the property next to the stream to have a buffer or something to hold the bank back. They would like to stay in line with what Duke Power has installed with the power box and their materials. Mr. Pearlman said the Town told Mr. O'Buckley to cease building until he got approval for the project from the Board. Mr. O'Buckley said this was a correct statement. Mr. Pearlman said, a Special Use Permit is required to construct the wall and a Variance is requested because it does not meet the code. Mr. Pearlman asked what the hardship is to grant the Variance. Mr. O'Buckley said he is requesting a Variance to maintain the bank to keep falling into the right-of-way. Ms. Kieffer said the project would not be constructed near the Town's right-of-way. Ms.

Barnes asked Mr. Kanipe if he has seen Duke Energy built a wall like what is at this project location. Mr. Kanipe said no he has not seen them do this before. He assumed they did this for the pads on the power box and to make it look more decorative. Duke Power did not ask Mr. Kanipe or Mr. Buckner about putting this wall up. Ms. Barnes also asked if he knows of any other front walls that have been installed due to sloping. Mr. Kanipe said there was one at 12 East Forest Road which the boulders were larger and more substantial. It was a boulder not stacked. It ran the length of East Forest for a little bit. The purpose of that particular project was they had trees that were on the bank and the stumps were disintegrating in the ground and eroding. Mr. Clarke read § 153.110 Section (D) which explains when Variances can be granted. Mr. Clarke said the Board needs to be comfortable they can find these things written in the Variance to grant this request. This is in the front yard setback and needs a Variance.

DELIBERATION AND DETERMINATION:

Mr. Pearlman restated the facts and said Mr. Michael O'Buckley at 4 Fairway Place is requesting a Special Use Permit and Variance to build a stone wall in the front yard which would be approximately two feet high. The request for a Variance is there will be mulch which would wash down from the bank into the abutting area to the street. He wants it to match the stone structure which was put up by Duke Energy to enhance the appearance of one of the transmission boxes.

Ms. Lynn Kieffer moved that a Special Use Permit and Variance be granted to Mr. Michael O'Buckley at 4 Fairway Place for a stone wall in the front yard 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. 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.

Further, she moved by 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. Rhoda Groce. Each member was polled separately, and Ms. Kieffer said aye, Mr. Chandler said aye, Ms. Groce said aye, Mr. Pearlman said nay, and Ms. Barnes said nay. Four votes in favor of the project were needed for the Variance. The Variance did not pass.

Mr. Pearlman asked to change his vote to aye. Ms. Barnes voted no because the angle of the slope is not unique.

Chairman Goosmann repolled the Board. Ms. Kieffer voted aye, Mr. Chandler voted aye, Mr. Pearlman voted aye, Ms. Groce voted aye, and Ms. Barnes voted nay.

The project was approved.

HEARING (Evidentiary):

The third matter is a for a Special Use Request for fence installation and Variance request for intrusion into the rear yard setback at 13 Cedar Chine. Mr. Chandler shepherded the matter. This is for construction of a deer fence in the rear yard. The setback for the rear yard is 25 feet. The posts are 170 feet long and 8-10 feet tall depending on the ground topography.

Mr. James Mullins said he apologized to the Board and got distracted by the conversations of the electric fence on the site visit. The deer fence is an all-natural wood. It would come back under the canopy but not in the side setbacks so it would be supported. The fence is to keep the deer and help reduce the deer coming in and destroying the vegetation. It is also to discourage coyotes. It would make it a safer environment and would not cause any drainage issues for the neighbors but in fact would help the drainage issues. Mr. Chandler asked why the fence has to be so close to the property line. Mr. Mullins said because when they moved here for the forest environment and when the neighbor's rear setback is cleared, that only leaves their forest in the view. They will not get to see and enjoy the beautiful views. Ms. Kieffer said this fence we are looking at is not actually what the Board approved as a deer fence. Mr. Clarke read the fencing requirements and the deer fence Mr. Mullins is proposing is not an actual deer fence. The wooden fence material does not qualify as deer fencing material. Mr. Clarke also said with Mr. Mullins' application, there is a dangerous above ground electric fence next to their property line. The Board has investigated this and the fence that is there is not electric. Mr. Mitchell Watson who used to live there installed this but they were told it could not be electrified. The Board cannot base their Variance decision on this.

Mr. Kanipe said the current fencing ordinance does not refer to electrified fencing anymore and states the type of fencing is allowable. Mr. Kanipe read from the Wildlife Commission that wood paneling is an acceptable material for deer fencing. It could be an 8-10-foot-high wooden fence. The Board said Mr. Mullins hasn't presented a hardship for the Variance request and an electric fence wouldn't be a hardship since it is not an electric fence. There doesn't seem to be a hardship 18 inches from the boundary line. Chairman Goosmann asked Mr. Mullins if he would be willing to put the fence outside the setback. Mr. Mullins said outside the setback removes all the wooded area in the yard and they would not enjoy the wooded area.

DELIBERATION AND DETERMINATION:

The matter was tabled until Mr. Mullins could get accurate measurements of the fence with the encroachment.

Ms. Groce said they cannot approve a fence that is 12-18 inches from the property line. Mr. Mullins is going to withdrawal the application for the deer fence.

DELIBERATION AND DETERMINATION:

The meeting was adjourned at 5:12pm. The next Board of Adjustment meeting is scheduled for Monday, July 17, 2023 at 4:30 pm.

ATTEST:

Greg Goosmann

Chairman

Laura Jacobs

Town Clerk