

MINUTES OF THE BOARD OF ADJUSTMENT MEETING
HELD MONDAY, MAY 15, 2023

The Board of Adjustment met at 4:00 p.m. on Monday, May 15, 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, Mr. Harry Buckner, Public Works Director, Mr. Tony Williams, Town Planner, and Mr. Billy Clarke, Town Attorney were also present.

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

Mr. Goosmann swore in the following:

Mr. Jonathan Kanipe

Mrs. Janet Whitworth

Mr. Phil Hardin

Mr. Con Dameron

Mr. Peter Stebbing

Mr. Jerome Douglas

Mr. Michael Silverman

Mr. Tom Gleason

Mrs. Cecilia Gleason

Mr. Harry Buckner

Mr. Wally Hachil

Mrs. Ann Skoglund

Mr. William Morrison

A motion was made by Mr. Robert Chandler to approve the minutes from March 20, 2023. Ms. Lynn Kieffer seconded the motion. The minutes were unanimously approved.

HEARING (Evidentiary):

The first matter is for a Special Use permit request for an accessory structure in the rear yard at 25 Park Road. Ms. Martha Barnes shepherded the matter. This request is for a retaining wall and landscaping. Ms. Whitworth would like to add a two-foot-tall and forty feet long retaining wall to create an area for planting perennials. Incorporated into the wall is a natural stone. It will also have a water fountain bird bath. It will not be visible. The fountain is the same height as the wall. Mr. Phil Hardin said he is in support of the project but wanted to let Ms. Whitworth know about the utility line on the property. Ms. Whitworth said she will not be working anywhere near that area of the utility line and is aware of it.

DELIBERATION AND DETERMINATION:

Ms. Lynn Kieffer recited the facts and said Mr. Mark Whitney and Ms. Janet Whitworth are applying for a Special Use Permit for a retaining wall that will be two feet tall and forty feet long and include landscaping at 25 Park Road.

Ms. Lynn Kieffer moved that a Special Use Permit be granted to Janet Whitworth and Mark Whitney of 25 Park Road for a retaining wall and landscaping 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. 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. The motion was unanimously approved.

HEARING (Evidentiary):

The next matter is a Special Use Permit request for a swimming pool in the rear yard at 26 East Forest Road and a landscaping plan. Mr. Lowell Pearlman shepherded the matter. The pool will be within the setback. Mr. Pearlman verified the fence will not encroach within the setback. The fence will comply with state law. This was verified by Mr. Dameron. Ms. Barnes asked if the landscaping plans will be submitted before the dirt is dug. A landscaping plan will be provided before the pool is dug.

DELIBERATION AND DETERMINATION:

Mr. Pearlman restated the facts and said Jason and Jennifer Marks are applying for a Special Use Permit at 26 East Forest Road to accommodate a pool and a fence. The fence is required under state law. The original plans showed the fence within the setback requirements. They are amending it to accommodate that setback as a four-foot black wrought iron fence. They will return later with a landscaping plan.

Ms. Rhoda Groce moved a Special Use Permit be granted to Jason and Jennifer Marks of 26 East Forest Road for a swimming pool and a fence 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. 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. Groce amended the motion to bring the information of the landscaping plan prior to the project being started. The motion was seconded by Ms. Lynn Kieffer and unanimously approved.

HEARING (Evidentiary):

The third matter is a for a Special Use Permit request for a rear yard fence and Variance request for encroachment into the side and rear yard setbacks at 24 White Oak Road. The matter is being shepherded by Ms. Rhoda Groce. Mr. Jerome Douglas said they would like to put a fence in their rear yard to have space for their dogs. There will be sufficient buffering for the neighbors. Ms. Groce asked if Mr. Douglas would be willing to buffer further if requested by neighboring property owners. Mr. Douglas said yes. The hardship could be the lot size since it is .39 acres. Mr. Kanipe pulled up the lot frontage which is eighty-seven feet and the current Ordinance requires one hundred feet. Mr. Douglas said he also would like to protect his dogs which he didn't think would be considered a hardship against the neighbors. Ms. Barnes said if he didn't build the fence in the setback and built fifteen feet in, what would the issue be. Mr. Douglas said there is no issue, but it would be a smaller space. Mr. Pearlman said the applicant did not bring up the hardship, but Ms. Kieffer did. Mr. Clarke said to get a variance, a hardship needs to be identified. Mr. Clarke said it sounds like the hardship is the size of the lot. Mr. Clarke said it would be easier if we had better measurements and showed a layout of the fence with the actual encroachment.

DELIBERATION AND DETERMINATION:

The matter was tabled until Mr. Douglas could get accurate measurement of the fence with the encroachment.

HEARING (Evidentiary):

The fourth matter is a Variance request for a retaining wall placement and landscaping plan review for a new home construction on lot 2 at Cedar Hill Road. Ms. Lynn Kieffer shepherded the matter. Mr. Silverman said the homeowners would like to have as much separation from the street as possible and maximize the amount of undisturbed area. This is the primary reason for having the retaining walls. There are three retaining walls. The average height of the entire 120-foot wall is less than 5 feet. The highest wall is right where it hits the home and the garage which is 6.5 feet. There will be evergreen plantings along the driveway on the base of the wall. The goal is to minimize destruction of trees. Ms. Kieffer addressed the free-standing wall. Mr. Silverman said the purpose is the garden is an intense garden/courtyard area. This wall height will not exceed six feet in height. Not counting the 120-foot retaining wall, there are three additional walls. Ms. Kieffer asked about the slope. Mr. Silverman said it's an average of 15%. This slope does create a hardship. The adjusted setback is due to the height of the house. The building height exceeds the maximum height. It does not exceed the maximum roof coverage. Ms. Barnes said the numbers have not been presented and neither has the landscaping plan. Mr. Pearlman said since the plans are not clearly presented, this issue needs to be properly presented to the Board.

Mr. Silverman said large native evergreen trees will be planted to screen from future neighbors. He also said he would present final landscaping plans, but he has never had to do this before. Ms. Barnes said if the detailed landscape plans were submitted for 2 Southwood, that landscape as installed does not meet the spirit of our tree ordinance. It is not in harmony with Biltmore Forest environs.

Chairman Goosmann asked for the height to be clarified. Mr. Buckner said it is the distance measured from the average ground level to the highest point. Someone needs to tell us where the ground level is. It varies because it is on a slope. The ground height of the home is a couple of inches too high and can be dropped to comply. Mr. Silverman will supply the updated plan and update the 25 foot barrier to show correct calculations and resubmit them to the Board. Given the

adjusted roof height of 26.9 feet, the revised side setback will be set to 25 feet. In addition, a hard copy will be submitted with each of those numbers by Mr. Silverman.

DELIBERATION AND DETERMINATION:

Ms. Kieffer restated the facts and said Thomas and Cecilia Gleason of lot 2 on Cedar Hill would like to request three walls and the others are 4'x12', 6'x12', and 4'x70'. We can vote to approve this subject to the conditions of the roof height. New numbers will be submitted not to exceed 26.9 feet, in addition to the extended side setback that is required. The landscaping plan has been reviewed and a final landscaping plan will be submitted prior to construction for approval.

Ms. Barnes moved that a Special Use Permit for two retaining walls and a dry stack stone wall be granted to Thomas and Cecilia Gleason on lot 2 of Cedar Hill and the facts as recited by Lynn Kieffer and her summation be accepted as findings and facts to support this grant. The condition of this approval is that the landscape architect go back and find the average site height and calculate the average building height so we can see if in fact alternate or modified setbacks are appropriate. If the average building height is up to 26.9 feet then they do not have to come back to the Board but if it is greater than 26.9 feet then they do have to come back to the Board. 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.

Mr. Lowell Pearlman seconded the motion and was unanimously approved.

HEARING (Evidentiary):

The last matter is for a Special Use Permit request for an accessory structure and Variance request for an accessory structure placement within the setback at 7 Stuyvesant Road. Mr. Robert Chandler shepherded the matter. Mr. Hachil from Bessemer Trust apologized for not having the dimensions on hand for the road but will provide this. Several weeks ago, a large oak tree came down and the gravel road was accessed by heavy machinery. Part of the required road may not be within the side setback. Mr. Clarke said we need to know the exact location of the road. Mrs. Skoglund said if the road was there in 1992 it would not have been in the setback. The deed did not have a drawing, it had a legal description. In 1992, it no longer goes to that corner as Mrs. Skoglund showed in the GIS. The very heavy equipment tore up the road path and sank into the dirt. In order to get to the point where there wasn't a mud hole, they covered it with materials. Mr. Morrison was unaware of any dirt, stone, or gravel path on either side of 388 Vanderbilt Road. Mr. Morrison owns 388 Vanderbilt Road. Mr. Hachil said the gravel serves as a purpose for soil erosion. It would help to prevent mud erosion to 388 Vanderbilt Road. Mr. Morrison said historically for the last eight years that path has been used as a path for lawn equipment and mowers. The Special Use Permit is for a gravel drive. Mr. Morrison said they were unable to see the road before this work was done and now all they see is rocks from the outside of their house. Mr. Morrison would like to see the rock removed and replace it with ground gravel and put sand on top of it. There has been no water erosion in the past eight years. Ms. Skoglund suggested mulch. Mr. Morrison said the mulch would get torn up with the heavy equipment that goes back and forth. Mulch will only last for a few months and would like to see the material he described. Chairman Goosmann said it seems like the neighbors could discuss a solution together. Mr. Chandler suggested tabling this matter until the homeowner talks to the neighbor which would include a good solution.

DELIBERATION AND DETERMINATION:

The matter was tabled until next month.

The meeting was adjourned at. The next Board of Adjustment meeting is scheduled for Monday, June 19th, 2023 at 6:04pm.

ATTEST:

Greg Goosmann

Chairman

Laura Jacobs

Town Clerk