

MINUTES OF THE BOARD OF ADJUSTMENT MEETING
HELD MONDAY, NOVEMBER 20, 2023

The Board of Adjustment met at 4:00 p.m. on Monday, November 20, 2023.

Mr. Greg Goosmann, Ms. Martha Barnes, Ms. Lynn Kieffer, Ms. Rhoda Groce, and Mr. Robert Chandler were present. Mr. Jonathan Kanipe, Town Manager, and Mr. Tony Williams, Town Planner, and Town Attorney, Mr. Billy Clarke were also present.

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

Chairman Goosmann swore in the following:

Mr. Tony Williams

Mr. Jonathan Kanipe

Ms. Liz Kimberly

Mr. Steven Lee Johnson

Mr. Michael Silverman

Mr. Mario Piccolo

Mr. Jason Gilliland

Ms. Vanessa Binns

Ms. Ann Clark

Mr. Konstandin Barlas

Ms. Antonia Barlas

Dr. Cecilia Gleason (via Zoom)

Chairman Goosmann and Mayor Goosmann honored Mr. Lowell Pearlman for his service as a Board of Adjustment member.

A motion was made by Ms. Martha Barnes moved to approve the minutes from October 23, 2023, with exception of the Mullins matter which will be approved at the December meeting. Mr. Robert Chandler seconded the motion, the minutes were unanimously approved.

HEARING (Evidentiary):

The first matter is for a Special Use Permit request for an accessory structure and Variance request for intrusion into the side and rear yard setback at 8 White Oak Road. Mr. John and Liz Kimberly are the homeowners. Mr. Robert Chandler shepherded the matter. The driveway is on the right side of the property. White Oak parking is not conducive to traffic flow so they are designing a traffic pattern that makes sense. There will be guest parking in the front of the house. It is a parking pad and guests will be able to access the front door directly. The carport is proposed to be 20'x26'. The existing house has been there since the 1920's and the rear of the house is already in the setback. The carport will not project any further than the rear line of the house. It is a two-hole carport. It is open in the front and in the sides. The rear of the property will be landscaped.

Mr. Chandler confirmed the hardship is the home was built in the 20s before the setback rules went into effect. The design of the roof is a hip roof which matches the architecture of the house. There will be lateral bracing. This is also compliant with the roof coverage. It will be 520 square feet.

DELIBERATION AND DETERMINATION:

Mr. Chandler restated the facts and said John and Liz Kimberly at 8 White Oak Road and have asked for a Special Use Permit for an accessory structure and a Variance to be in the rear and

side yard setbacks. The owners are asking for a two-car carport in the existing driveway area. It will be placed in the side yard near the rear of the home and will be within the rear and side yard setbacks. The setbacks will be located eight feet within the rear property line and seven feet from the side property line. They are rebuilding where a car port was originally built in the 1920's. They are planning landscaping to help buffer between the rear yard and side yard. The carport will be 20'x26'.

Ms. Barnes made a motion to approve a Special Use Permit to John and Liz Kimberly of 8 White Oak for an accessory structure (car port) and Variance for intrusion into the setbacks 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. She further moved the Board define at 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. The motion was seconded by Mr. Robert Chandler and unanimously approved.

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. She 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. Groce seconded the motion and was unanimously approved.

HEARING (Evidentiary):

The second matter is for a Special Use Permit request for multiple accessory structures and Variance request to exceed maximum roof coverage and maximum roof height at Cedar Hill Drive, Lot 1, Parcel 964642141900000. The matter was shepherded by Lynn Kieffer. There are eight structures being requested; a pool, a pool pavilion, an estate wall around most of the property, a retaining wall, a multi-sport court, raised beds, four driveway columns, and a gate with two columns. They are also requesting Variances for maximum roof coverage and maximum roof height. They have also submitted Plan A and Plan B. Plan A is the plan the applicants like better. Plan B was compliant with the roof height and Plan A was not. The difference between Plan A and Plan B regarding the roof height is to exceed the maximum height of forty feet. For Plan A, the roof height would be 42' 8.5". Plan A exceeds the maximum roof height by 2' 8.5". On the roof coverage, both plans exceed the maximum square footage by 41'. The difference between Plan A and Plan B are the pitches of the roofs which compress the attic space by two feet. Also, the second-floor finished floor level is lowered. It is possible to get it further down, but it depends on what the structural requirements are. Eighty-three trees will be removed and twenty trees will be removed for the multi-court sport court.

Ms. Barnes asked what the land looks like at the back of the house. Mr. Mario Piccolo said it will basically look like a dropped or sunken courtyard. Ms. Barnes asked what the hardship is. Ms. Antonia Barlas, applicant, said the hardship is they want natural light in the basement. The basement is underground. Mr. Barlas said it won't look as good in the neighborhood to go with the Plan B basement. Ms. Kieffer said with new home construction, the Board has really encouraged people to stay within the maximum roof coverage (maximum height). Ms. Kieffer asked if there is any way they can work to be within the maximum roof coverage. Mr. Piccolo said yes, they can do this. Ms. Barnes asked what the hardship is for the roof coverage. Mr. Barlas said they decided to have a house designed that suited their needs. They knew the requirement for the coverage was 5,500 square feet at the time the Barlas's purchased the lot. When they submitted the plans, the website said it was 5,500 square feet also. The Barlas's didn't know about the change until they spoke to Mr. Williams.

Ms. Barnes asked Mr. Kanipe what day the Board of Commissioners approved the change from the Planning Commission to have a different approach to roof coverage. Mr. Kanipe said this happened during the July 2023 meeting, but Mr. Kanipe said the application page on the website had not been changed. Ms. Barnes said the Planning Commission looked at roof coverage and recommended a change that more accurately followed the impervious surface coverage totals on the lot. Ms. Kieffer asked about the size of the pergola. Mr. Piccolo said he doesn't have an exact size of the pergola, but he estimated it to be 30' x 12' for now. They would like to have a wall and a pergola. The idea is to have a simple focal point termination for the pool and an open-air trellis where they can have some casual seating. Ms. Kieffer asked about the wall going around the property. Mr. Kanipe read the ordinance and said, "the fence, gate, or wall is constructed entirely within the rear yard is not located in any side or rear yard setbacks and is constructed of materials deemed acceptable in § 153.049(D)." The rear yard is defined as the back plane of the house. Ms. Kieffer said the wall could not come to the front by the driveway. The wall could not be in the front or the side yard. A Variance would be needed to do this. Ms. Kieffer asked if they could bring it back. Mr. Kanipe said they are still allowed to have a gate which is a separate piece of this Ordinance. The gate and columns can still be there at this location. It just can't have the wall connected to it. Mr. Jason Gilliland said the sunken courtyard would need some level of barrier and to protect people from falling into it. The estate wall also serves as a retaining wall for the turnaround in the parking court. The applicant tabled the fencing and retaining walls until an updated plan is brought back.

Ms. Kieffer moved on to the multi-sport court which will be 4,950 of asphalt. A neighbor has objected to this. The Gleasons, who are building the house up the hill, are objecting, and their architect submitted a plan with their overlay. Mr. Steven Lee Johnson is representing Gleasons. Their bedroom window and office will be overlooking this court. The concern is there are two large flat areas that must be created with the current site plan and it doesn't necessarily conform as well to the existing slope of the property. Also, their concern is the complete removal of trees basically within the entire lot. There is extreme concern involving potential noise from the sport court, especially with pickleball. Mr. Barlas said the court will not be lit and pickleball will not be played on this court. The grades are also not as bad as it is perceived. There will also be buffering around the court. After a 5–6-year period, the Gleasons may not be able to see into the rear yard.

The raised beds were discussed. This will be used for herb and vegetable gardens. The driveway columns at the end of the house must be just outside the right of way and the gate has to be sixty feet back. They will be six feet in height. It is set back sufficiently and meets the requirements. Ms. Kieffer said the estate wall has been tabled for today. Mr. Barlas asked if they could put a basketball goal at one end of the court. Mr. Clarke said a basketball goal would be fine. The Board does not approve basketball goals.

Mr. Piccolo said they will change the name of the court to a tennis court with a basketball goal at one end of the court. There will be non-intrusive lighting.

The pool pavilion does not have roof coverage. It is an open-air pavilion not intended to have roof coverage.

Ms. Vanessa Binns expressed her frustration at the applicants having all the trees taken down and doesn't feel like she was treated fairly when they presented their case to the Board of Adjustment. Chairman Goosmann said the Board goes to extreme lengths to be fair to everyone. The wall will also be discussed at another meeting date.

Mr. Barlas said he wants to work with neighboring property owners to make sure they are happy with the project. They also agreed to put down additional landscaping if needed.

Ms. Kieffer restated the facts and said Konstandin and Antonia Barlas of 23 Cedar Hill Drive have requested a Variance for new construction for their house for maximum roof coverage and to exceed maximum roof height. They have submitted Plan A and Plan B. Plan A exceeds the maximum roof height of forty feet. The maximum roof height shown on this plan is 42' 8.5". Plan B the maximum roof height is 39' 11.5". Plan B is compliant in roof height. Plan A is not. They would like to build Plan A.

Dr. Cecilia Gleason was sworn in via Zoom and expressed her concern for the sport court and lighting. Dr. Gleason also submitted a letter to the Board. She is a neighboring property owner. The lights in her prior neighborhood were very disruptive to the neighborhood at night and she does not want to hear the noise of the court. Chairman Goosmann said they will not have a

pickleball court and they would like a tennis court with a basketball court at one end. They will also not have any intrusive lighting and are going to screen which would prevent Dr. Gleason from seeing the court. It would also minimize the noise. Dr. Gleason said it would take quite a while for the vegetation to grow. Mr. Gilliland said at the time of planting, the evergreens should be 8'-10' in height and they will be 25'-30' in height at maturity. Mr. Johnson said the trees that are being planted inside the wall are deciduous, so for six months out of the year there will be no leaves on those trees and suggested a magnolia or hollies. They would be willing to modify the landscaping plan.

Ms. Ann Clark said she has lived in Biltmore Forest all her life and the most beautiful thing about living here is the old trees. She is very upset about the plan and all the trees that will be cut down. She also doesn't feel the house fits in with Biltmore Forest.

Ms. Rhoda Groce made a motion that a Variance as requested be granted to Konstandin and Antonia Barlas of 23 Cedar Hill Drive for Plan A with a height above forty feet and the facts as recited by Lynn Kieffer and her summation be accepted as findings and facts to support this grant. The Board has inspected the site and a neighboring property owner has objected. 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. She 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. Barnes said the neighboring property did not object to Plan A.

Ms. Martha Barnes seconded the motion. Mr. Chandler said there is no hardship and voted nay. Ms. Groce voted nay, Ms. Barnes voted aye, Ms. Kieffer voted nay. Chairman Goosmann said it was voted down for Plan A which leaves them to proceed with a height of forty feet for the existing Ordinance.

Ms. Kieffer restated the facts for the second Variance to exceed the roof coverage by forty-one square feet. The hardship is when they submitted the plan it was at the time of the change in the Ordinance, and it was at 5,500 square feet at that time and now it is 5,459 square feet. They are going to be 41 square feet over on the roof coverage. The Ordinance did change after the purchase of the lot.

Ms. Martha Barnes moved that a Variance as requested be granted to Toni and Dean Barlas of Lot 1 on Cedar Hill exceeding roof coverage and the facts as recited by Lynn Kieffer be accepted as findings and facts to support this grant. The Board has inspected this site and no neighboring property owner has objected to this variance request. Ms. Groce seconded the motion. Mr. Chandler said they intended to follow the rules but his impression is there would be a reason for a Variance. The motion was unanimously approved.

Ms. Kieffer said Dean and Toni Barlas at 23 Cedar Hill Drive are requesting Special Use Permits for a swimming pool, a pool pergola, a retaining wall, raised beds, four driveway columns, and a gate with two columns. These are six requests for Special Use Permits. They are pulling out the estate wall, so the wall is less obvious than what it appeared, so it won't go to the front of the house. The tennis court will be voted on separately.

Mr. Robert Chandler moved that a Special Use Permit be granted to Konstandin Barlas of the lot next to 23 Cedar Hill Drive and the facts as recited by Lynn Kieffer and her summation be accepted as findings and facts to support this grant. The Board has inspected the site and one neighbor has objected and further he moved that by granting this Special Use Permit would not (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. Kieffer said they need to specify the pool, pergola, the retaining wall, the raised beds, the four driveway columns, and the gate and two columns are the six matters being

voted on. Ms. Martha Barnes seconded the motion. The motion was unanimously approved, and all six items were approved.

Ms. Kieffer said the applicants have requested a Special Use Permit for a tennis court that is 4,950 square feet in the back of the lot. A neighbor has objected. Ms. Kieffer also said there would be non-intrusive lighting and no pickleball. It would just be for tennis and basketball. Mr. Kanipe said the light must be shielded down toward the structure it is actually lighting. The Board of Adjustment has previously approved site lighting and nothing that goes up in the sky. It must be directed down and shielded. The applicants said pole lighting will not be installed. Dr. Gleason said the concern of the lighting remains. Chairman Goosmann said the screening that was originally planned for the wall is still intended whether the wall goes in or not. The applicants said yes.

Chairman Goosmann polled all members. Ms. Groce voted aye, Ms. Barnes voted aye, Mr. Chandler voted aye, Ms. Kieffer voted nay. It passed by majority.

The meeting was adjourned at 6:34 pm. The next Board of Adjustment meeting is scheduled for Monday, December 18, 2023, at 4:00 pm.

ATTEST:

Greg Goosmann

Chairman

Laura Jacobs

Town Clerk