

MINUTES OF THE BOARD OF ADJUSTMENT  
MEETING HELD MONDAY, APRIL 15, 2024

The Board of Adjustment met at 4:00 p.m. on Monday, April 15, 2024.

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

Chairman Greg Goosmann called the meeting to order at 4:03 p.m.

Chairman Goosmann swore in the following:

Mr. Jonathan Kanipe

Mr. Tony Williams

Mr. Kerney McNeil

Ms. Katie Jones

Ms. Bonnie Markle

Mr. John Kimberly

Ms. Liz Kimberly

Mr. John Widman

Mr. Wesley Wiseman

A motion was made by Mr. Robert Chandler and Ms. Barnes seconded to approve the minutes from March 18, 2024 . The minutes were unanimously approved.

HEARING (Evidentiary):

The first matter is for a Special Use Permit request for an accessory structure (landscaping wall) within the rear yard at 19 Hemlock Road. Mr. Tony Williams shepherded the matter. Mr. Chandler said his wife is involved with Preferred Properties as an agent and the homeowner and his wife are also involved. They would like to construct a stone landscaping wall for a new garden. The wall would be in the rear yard of the home near the garage parking area. It complies with all the setbacks. The dimensions are 60 linear feet in length and 30 feet high. It is not visible to the neighbors. The wall is lower than the driveway.

DELIBERATION AND DETERMINATION:

Mr. Williams restated the facts and said the property owners would like to construct a stone landscaping wall that will be 60 linear feet in length and 30 feet high.

Ms. Lynn Kieffer moved that a Special Use Permit as requested be granted to Kerney McNeil of 19 Hemlock Road and the facts as recited by Tony Williams and his summation be accepted as findings and facts to support this grant. The Board has inspected this site, and no property owners have 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. The motion was seconded by Mr. Robert Chandler and unanimously approved.

HEARING (Evidentiary):

The second matter is for a Special Use Permit request for a retaining wall along an existing drive and boulder installation; A Variance request is also requested for construction within the front yard at 430 Vanderbilt Road. Mr. Tony Williams shepherded the matter. They would like to add a low screen wall at the existing front yard parking area. The wall will be 18” high and there will be a small section within the front setback. They would like to add accent boulders near the drive entries on both sides but outside of the Town’s right-of-way. There will be 2-3 boulders plus or minus two feet in size with a total of four locations. The boulders will be set into the ground. The Variance is for the small corner of the wall. The hardship is the edge of the parking lot has some settling and erosion. This is causing safety and maintenance concerns. The structure of the wall will eliminate these issues.

DELIBERATION AND DETERMINATION:

Mr. Williams restated the facts and said the property owners at 430 Vanderbilt are applying for a Special Use Permit and Variance for a low screen wall at the existing front yard parking area. The wall will be 18” high and there will be a small section within the front setback. They would like to add accent boulders at the drive entries. There will be 2-3 boulders plus or minus two feet in size with a total of four locations on the property. The boulders will be set into the dirt. The landscaping will be between the wall and the road.

Mr. Chandler made a motion to approve a Special Use Permit to Tom Bolton of 430 Vanderbilt Road and the facts as recited by Tony Williams and his summation be accepted as findings and facts to support this grant. The Board has inspected this site, and no property owners have 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. The motion was seconded by Mr. Robert Chandler and unanimously approved.

Further, he moved that by granting this Variance further 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.

Mr. Barnes seconded the motion and was unanimously approved.

#### HEARING (Evidentiary):

The last matter is for a Special Use Permit request for retaining walls and a Variance request for intrusion into the side yard and rear yard setbacks and an additional wall location within the front yard at 8 White Oak Road. Mr. Tony Williams shepherded the matter. They are proposing a 60 linear foot wall and 18" maximum height.

A neighbor across the street, David Hodges, is in favor of the project. Mr. Kimberly said it is 12-18" in height and is a low planting wall that will run along the border of a planting bed that has been there prior to them buying the house in 2004. They are not increasing the area of the bed, they would just like to add a stone border around the existing bed. They need it for

maintenance and erosion control. Ms. Liz Kimberly said it would help prevent washout and look much more aesthetically pleasing. The hardship is they have erosion issues they would like to get rid of. They have existing landscaping that would not show the wall from the street, and they are willing to buffer additionally if needed.

#### DELIBERATION AND DETERMINATION:

Mr. Williams restated the facts and said the property owners at 8 White Oak Road are requesting a Special Use Permit and a Variance for a landscaping wall within the front yard. The length is 60' and height will be between 12"-18". It will be out of the front setbacks.

Ms. Barnes made a motion to grant a Special Use and Variance to Mr. John and Ms. Liz Kimberly of 8 White Oak Road for a garden wall and retaining of a flower bed and the facts as recited by Tony Williams and his summation be accepted as findings and fact to support this grant. 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 that by granting this Variance further 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.

The motion was seconded by Ms. Kieffer. The motion was unanimously approved.

HEARING (Evidentiary):

Mr. Williams said the second portion of the matter at 8 White Oak Road entails a retaining wall beside their driveway. It will be approximately 150' long and vary in height from 12"-32" in height and will require various intrusion into the setbacks. The wall is not located within the Town's right of way at the far end. Mr. Kimberly said the retaining wall would line up on the south side of their driveway. It was installed to address water issues they have. The topography of the land and the lot to the south of them means that water comes their way. There are also three gutters on the home adjacent to theirs that direct water over the slope and onto their driveway. It also goes into the basement and the garage. They would like to have approval for this wall that includes a French drain that traps the water and redirects it away from the house.

Mr. John Widman who is the homeowner's son at 10 White Oak asked why the Kimberly's didn't get approval before constructing the project. Mr. Kimberly said they made a mistake and thought this was landscaping. They are here today to seek approval. Mr. Widman said he is frustrated because he said it was done before the property lines were determined and construction continued. Mr. Kimberly said they had a surveyor who has been a licensed surveyor for Buncombe County for many years and didn't think the property lines were in question. Mr. Widman said he had their property surveyed as well and the wall is right on their line. Ms. Kimberly said their survey has something completely different than the Widman's survey. Ms. Kimberly said the Widman's had a surveyor shoot the line and not an actual survey. There was no documentation in the line that was shot. Ms. Kimberly also said they had a survey done before the project was started that was required by their architect. Mr. Widman asked if they have the survey documentation and Ms. Kimberly said yes, the documentation is part of the board packet.

Mr. Widman provided the Board with a Geo-Tech packet which is a report from an engineer who measures slope and soil conditions. He also said he had a survey done which was included in the Geo-Tech report. Mr. Widman said there are three areas of concern with the

retaining wall. The first concern is safety. If a car were to drive off, it would cause bodily harm. The second concern Mr. Widman has is the erosion. When the excavation took place, there was a drop of 44” from the Widman’s driveway downward which Mr. Widman says is significant. The Geo-Tech report talks about erosion control, and they stipulated the excavation would cause additional erosion and there were safety concerns that needed to be addressed. Mr. Widman also said the location of the retaining wall is concerning. He said the retaining wall was built before the property line was established. Mr. Widman requested that a professional civil engineer design a new retaining wall that will address safety and erosion control. Mr. Widman showed a rough drawing of what would be appropriate and said a professional needs to get involved.

Ms. Kieffer said she appreciates the safety concern he has because it is quite a drop off on the driveway. Mr. Widman would like to see the wall set seven feet behind the property line and alleviate the potential for danger.

Mr. Billy Clarke said the survey issue needs to be determined between the two property owners. The property line issue is what needs to be resolved. Mr. Clarke said to grant this Variance, at least four members of the Board would need to vote for it.

Ms. Kimberly said the Board has a certified survey of the property with a stamped seal. Ms. Kieffer asked if the Widman’s had a certified copy of a survey. Mr. Widman said he had a receipt of the surveyor coming out. Mr. Widman said he does not have a stamped survey but says it is accurate.

Ms. Kieffer asked if they could build a small terrace. They Kimberly’s would like to keep the project as is.

Ms. Kimberly said their hardship is they have a water issue and they would like to prevent it and correct the issue. Mr. Widman asked why he didn’t address the issue twenty years ago when it initially started.

#### DELIBERATION AND DETERMINATION:

Mr. Williams restated the facts and said the property owners at 8 White Oak Road are applying for a stacked stone wall along the driveway. The wall will be 150’ long and 12”-32”

varying in height. The wall is not located within the Town’s right-of-way. The homeowners offered to include the stepping of the wall and offered to raise and terrace it between the carport gutter system that presently exists along with the words hardy and dense landscaping as well.

Mr. Widman would like clarity on the width and height of the terrace. Ms. Barnes said it would be up to 4’ in height between the guttering system. The neighbor Mr. Widman and Ms. Widman at 10 White Oak Road have objected and submitted a report from ECS consulting.

Mr. Chandler made a motion to postpone deciding this proposal so neighbors can bring back more information. Such as additional drawings, stamped surveys, and additional landscaping. Ms. Kieffer seconded the motion. The motion was unanimously approved.

The meeting was adjourned at 5:57pm.

The next meeting is scheduled for Monday, May 20, 2024 at 4:00pm.

ATTEST:

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Greg Goosmann

Chairman

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Laura Jacobs

Town Clerk