

MINUTES OF THE BOARD OF ADJUSTMENT MEETING
HELD MONDAY, DECEMBER 14, 2020

The Board of Adjustment met at 4:00 p.m. on Monday, December 14, 2020. The meeting was held virtually via Zoom.

Members present: Mr. Greg Goosmann, Ms. Rhoda Groce, Ms. Lynn Kieffer, Mr. Robert Chandler, and Mr. Lowell Pearlman. Ms. Martha Barnes, alternate member, was also present. Mr. Jonathan Kanipe, Town Manager, Mr. Harry Buckner, Public Works Director, and Mr. William 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. Jonathan Kanipe
Mr. Harry Buckner
Mr. Ryan Cecil
Ms. Rebecca Cecil
Mr. Brad Fuhrman
Mr. Scott Alexander
Ms. Jenny Whitt
Mr. Raymond Russell
Ms. Elizabeth Russell
Mr. Clay Mooney
Mr. Joshua Shores
Ms. Mary Tepper

A motion was made by Ms. Lynn Kieffer to approve the minutes from November 16, 2020. Ms. Rhoda Groce seconded the motion and was unanimously approved. Roll call was taken.

HEARING (Evidentiary):

A Special Use Permit was requested for the installation of a playset in the rear yard. Ms. Martha Barnes shepherded the matter. The approximate square footage is 2,500. The playhouse is custom made. The playhouse is out of view so the neighbors will not be able to see it. Mr. Cecil agreed to buffer the playhouse if needed. It is located on the Northwest section of the house and should not be visible to any neighbor. There were no further questions or comments.

DELIBERATION AND DETERMINATION:

Ms. Barnes recited the facts. Mr. Ryan and Rebecca Cecil at 7 Frith are requesting to build an accessory structure that is a playground for their children. The playground is not within a setback. It would not be visible to any adjoining property. There is also no issue with impervious surfaces. The playhouse will also keep within the same design as the house. No neighboring property owner has objected.

Ms. Rhoda Groce moved that a Special Use Permit be granted to Ryan and Rebecca Cecil of 7 Frith Drive for the installation of a playset in the rear yard 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. Ms. Groce 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. Pearlman seconded the motion. A roll call vote was taken, and the motion was unanimously approved.

HEARING (Evidentiary):

A Special Use Permit is requested for the installation of roof mounted solar collectors at 1345 Hendersonville Road at Carolina Day School. Mr. Lowell Pearlman shepherded the matter. There will be two roof mounted solar array systems installed. This will be similar to the solar installation of the upper school that occurred a few years ago. It will be 100 kilowatts for each installation. It will generate enough power to generate 55% of each facility. Mr. Robert Chandler asked if the sun would reflect on other homes. Mr. Scott Alexander from Eagle Solar said it would be flat so neighboring property owners cannot see the panels. On the lower school, the panels can be seen but only from another part of the school. It would not be visible to a neighboring property owner. It is non-reflective material and the panels will be black. The panels are all identical. It is the same material as the upper school installation. There were no further comments regarding the project.

DELIBERATION AND DETERMINATION:

Mr. Pearlman recited the facts and said a Special Use Permit is requested by Carolina Day School for installation of two 100-kilowatt solar array systems. There have been no objections by neighboring property owners.

Ms. Kieffer moved that a motion be made to grant a Special Use Permit to Carolina Day School at 1345 Hendersonville Road for installation of two 100-kilowatt solar array systems 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. Ms. Kieffer 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. Martha Barnes seconded the motion. Roll call was taken by Chairman Goosmann and the motion was unanimously approved by all members.

HEARING (Evidentiary):

A variance is requested for the reconstruction of a detached accessory building within the side yard setback at 307 Vanderbilt Road. The matter was shepherded by Mr. Robert Chandler. An existing storage building was located on the concrete pad and has deteriorated and in need of replacement. Ms. Russell said the dimensions are 16' long and 8' wide. The height is 12' on one side and 10' on the other side. Mr. Russell said no neighbors object to the project. Mr. Clarke suggested the Board review the project based on the easement from an earlier property survey and the fact it is on the property line. It is also very visible from the neighbor's house. The Russells said they would be willing to buffer the area so it is not visible. The easement has been received and it will be reviewed after the meeting is conducted.

DELIBERATION AND DETERMINATION:

Mr. Robert Chandler recited the facts and said Mr. Ray and Elizabeth Russell of 307 Vanderbilt Road are requesting a variance for reconstruction of a detached accessory building within the side yard setback. They will use the existing concrete pad. They also have to make sure it is not on their neighbor's property and get the proper legal paperwork to allow this. They will also be working with neighbors' for additional buffering if it needs to be planted. They are applying for a Special Use and a Variance. There were no additional facts or comments.

Ms. Martha Barnes made a motion to approve a Special Use Permit and Variance and that it be granted to Mr. Ray and Elizabeth Russell of 307 Vanderbilt Road with the condition that the Town Attorney review the easement for compliance before the permit is valid. This is for reconstruction of a detached accessory building which is a storage shed and for a Variance of the

accessory structure 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. Ms. Barnes 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. Barnes further 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. 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 Town Attorney, Mr. Billy Clarke, will review this Variance. Ms. Kieffer, Mr. Chandler, Ms. Barnes, Mr. Pearlman, and Ms. Rhoda Groce approved the motion contingent upon the review of the easement.

HEARING (Evidentiary):

A Special Use Permit is requested at 26 Ridgfield Place for installation of a 12'x12' concrete slab for a hot tub with associated 6' tall privacy fence. Ms. Lynn Kieffer shepherded the matter. Ms. Jenny Whitt said she would like to install a 12'x12' concrete pad where a hot tub will be placed and connect to the existing deck for a privacy fence around the hot tub. The neighbors are aware of the potential project and have no objection.

DELIBERATION AND DETERMINATION:

Ms. Kieffer recited the facts and said Ms. Jenny Whitt would like to install a 12'x12' concrete pad where a hot tub will be placed. Ms. Whitt would also like to install a privacy fence around this area. Mr. Chandler asked if Ms. Whitt would be willing to buffer if needed. Ms. Whitt said yes. There were no further questions or comments.

Mr. Pearlman made a motion to move that a Special Use Permit be granted to Ms. Jenny Whitt at 26 Ridgefield Place for installation of a concrete pad, hot tub, and surrounding fence and the facts as recited by Ms. Lynn Kieffer 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. Mr. Pearlman 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. Robert Chandler seconded the motion. A roll call vote was taken and unanimously approved by all board members.

HEARING (Evidentiary):

A variance is requested at 32 Cedarcliff Road to exceed the maximum roof allowance associated with the construction of a new residence. Special use permits are requested for the

installation of a swimming pool and pickleball court (accessory structures) as part of the construction. Ms. Groce shepherded the matter. Mr. Clay Mooney, landscape architect, discussed with Mr. Shores the limited options of the reduced roof area. Mr. Shores and his family decided to move back to North Carolina a few months ago. Mr. Shores thought Biltmore Forest would be a great place to live and thought they would purchase this lot. Mr. Shores thought the builder was familiar with the roof limitations.

Ms. Groce said they have to uphold the ordinance as written and asked Mr. Shores what the hardship is for the variance. Ms. Groce said for new construction, a Variance has not been granted in the past. Mr. Shores asked what the definition of a hardship is. Mr. Clarke said there is a statute. The lot size at 32 Cedarcliff is 2.5 acres and typically, this happens for lot sizes of 1-1.5 acres or less. Other hardships are allowing people to replace existing structures that are in the side and rear yard setbacks. Mr. Clarke said he has been doing this job for approximately eight years and there have been a number of houses torn down in the Town and rebuilt on the property. All of these have complied with the roof limitations.

Mr. Pearlman suggested to Chairman Goosmann to explain the statutory rules to Mr. Shores of withdrawing an application or delaying a motion. Chairman Goosmann told Mr. Shores, in the event a motion is carried out and it fails, then this request cannot be brought back to the Board for one year. Mr. Clarke said the application could be withdrawn or have the board table it, then Mr. Shores could come back with a modified application. As long as the Board takes no action, Mr. Shores can come back every month. Mr. Mooney discussed with Mr. Kanipe about the porte cochere and if it were to become separated from the house, it would be considered an accessory structure. Mr. Mooney asked Mr. Kanipe if that square footage would still be added to the roof area if it were separate. Mr. Kanipe said the maximum roof coverage is defined as the total roof area of all structures.

Ms. Mary Tepper said as a neighbor, what Mr. Shores is proposing would be an improvement of the property. Ms. Rebecca Cecil also agreed that what Mr. Shores is proposing would be a great improvement to the existing property.

Mr. Mooney reiterated the drawings that were submitted reflected a 6.9% overage. Mr. Mooney said this proposal could be reduced down to 4.3%. Mr. Mooney said he might be able to


get it down to 3.5%. Mr. Clarke said the Board is currently considered a proposal with 6.9% overage.

DELIBERATION AND DETERMINATION:


Ms. Rhoda Groce restated the facts and said a Variance has been requested for Mr. Joshua Shores 32 Cedarcliff Road to exceed the maximum roof allowance associated with the construction of a new residence. Special use permits are requested for the installation of a swimming pool and pickleball court (accessory structures) as part of the construction. Chairman Goosmann added that 6.9% additional roof coverage is proposed. Mr. Shores chose to withdraw the application.

Chairman Goosmann adjourned the meeting at 5:15 pm. The next Board of Adjustment meeting is scheduled for Monday, January 25, 2021 at 4:00 pm.

ATTEST:



Greg Goosmann
Chairman



Laura Jacobs
Town Clerk