



To: Members of the Board of Adjustment, Applicants & Neighboring Property Owners
From: Jonathan B. Kanipe, Town Manager
Date: March 4, 2021
Re: **Board of Adjustment Meeting – March 15, 2021**

Applicants:

You or a representative **MUST** attend the Zoom meeting in order to have the matter considered.

Members of the Board of Adjustment & staff may visit each property prior to the meeting. If this occurs, the property owner will be notified beforehand and asked if they approve the visit. If so, the visit will be conducted in a socially distant manner consistent with North Carolina state orders related to preventing the spread of Covid-19.

Neighbors:

You are receiving this notice because your property is adjacent to an applicant on this month's agenda.

You may review applications & plans for the projects on this agenda at <http://www.biltmoreforest.org/board-of-adjustments>.

You are invited to attend the scheduled meeting via Zoom and make comment when called upon. Any additional information regarding the Zoom meeting will be provided on the Town's website no later than March 10, 2021.

The following items of business will be considered by the Biltmore Forest Board of Adjustment on Monday, March 15, 2021 at 4:00 pm in the Town Hall Board Room via Zoom. The format for the meeting and instructions for attending the meeting via Zoom can be found on the second page of this agenda. The link for the Zoom meeting can be found at the bottom of the second page.

1. The meeting will be called to order and roll call taken.
2. The minutes of the February 22, 2021 regular meeting will be considered.
3. Hearing of Cases (Evidentiary Hearings, Deliberations & Determinations).

Case 1: 9 Hilltop Road – Special Use Permit Request for the Installation of Rooftop Mounted Solar Panels

Case 2: 8 Westwood Road – Special Use Permit and Variance Request for Temporary Installation of Front Yard Fencing
(Continued from June 2020 Meeting)

Case 3: 296 Vanderbilt Road – Special Use Permit and Variance Request for Installation of Fence along Rear Property Line

4. Adjourn

Process and Procedure for March 15, 2021 Board of Adjustment Meeting via Zoom

- All participants attending will be held in the “waiting room” prior to admittance by Town staff. Once admitted into the meeting, please mute audio until called upon by the Board chair.
- The meeting will be called to order at 4:00 p.m. by the Chair. All interested parties and applicants will be virtually sworn-in at this time.
- Each matter will be called forward and Town staff will authorize video and audio for the applicants and any person with standing for that particular case. If an applicant would like to present visual evidence, they must provide this evidence to Town staff no later than Friday, March 12, 2021.
- The Board chair, or other Board of Adjustment member, will specifically ask questions to the applicant and ask for any evidence that they would like to present.
- The Board chair, or other Board of Adjustment member, will then specifically ask for any person with standing for that specific matter to provide comment. Town staff will moderate this comment period but will ensure each person who wishes to speak or provide evidence is able to do so.
- When all evidence and testimony has been provided, the Board will deliberate and render a decision, then move on to the next matter where the process will be repeated.

How to Access the March 15, 2021 Board of Adjustment Meeting via Zoom

In order to access the Board of Adjustment meeting, please visit <http://zoom.us> to sign up, for free, for a Zoom account. This will enable you to participate with your desktop or laptop computer as you see fit. The Zoom link and log-in credentials are at the bottom of this page.

You may also download the free Zoom app from the Apple Store or Google Play on your mobile iOS or Android device. This app will walk you through setting up a free account.

If you are unable to access the meeting through a web or app based format, but would still like to listen and participate in the meeting, you may do so by calling one of the phone numbers listed below and entering the meeting ID and password.

Join Zoom Meeting
<https://us02web.zoom.us/j/88969823605?pwd=Tk54MnFXYUtHczJLMUdvNWN1ckl0QT09>
Meeting ID: 889 6982 3605
Passcode: 696515

MINUTES OF THE BOARD OF ADJUSTMENT MEETING
HELD MONDAY, FEBRUARY 22, 2021

The Board of Adjustment met at 4:00 p.m. on Monday, February 22, 2021. The meeting was held virtually via Zoom.

Members present: Mr. Greg Goosmann, Ms. Rhoda Groce, Mr. Robert Chandler (via Zoom), Ms. Lynn Kieffer, and Mr. Lowell Pearlman (via Zoom). Ms. Martha Barnes, alternate member, was also present via Zoom. 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. David Owen
Mr. Roger Cerasoli
Ms. Martha Barnes
Mr. David Nelson
Mr. Don Watson

A motion was made by Ms. Lynn Kieffer to approve the minutes from January 25, 2021. Ms. Rhoda Groce seconded the motion. Roll call was taken by Chairman Goosmann and the minutes were unanimously approved.

HEARING (Evidentiary):

A Special Use Permit was requested at 82 Chauncey Circle for the installation of an Accessory Structure (Fence) in the Rear Yard. Ms. Kieffer shepherded the matter. Mr. David Owen said foliage will be planted on one side and it will be a simple iron fence 4 feet in height, which will make it easier to blend in with the surroundings. It is compliant with all setbacks.

Ms. Kieffer asked Mr. Owen if he would be willing to plant extra buffering if Ms. Grohs, a neighboring property owner requested it. Ms. Kieffer also asked if Mr. Owen would be willing to plant additional screening if needed for neighboring property owners, Mr. Nelson and Ms. Barnes. Mr. Owen has been working with the neighboring property owners regarding the plans for buffering.

Ms. Barnes asked if there was going to be screening all sides of the house. Mr. Owen said yes, there would be screening on all sides of the house. There will be particular attention on the side of Ms. Groh's house and Ms. Barnes and Mr. Nelson's house. Mr. Nelson asked about the time limit on screening. Mr. Kanipe said six months from completion of the project. Mr. Nelson also asked about the potential drainage issues that may occur from the result of having a fence installed, specifically under the fence from the northeast to the southwest. Is there a design in place to make sure the drainage will not overflow onto 100 Chauncey Circle? Mr. Owen said the fence would not affect the drainage at all. Mr. Nelson expressed concern because there are three pipes going in and two pipes going out which could mean water would be held up. In addition, a fence can hold up debris if there is not an outlet. The fence will have fence posts anchored into the ground and the fence will be above that. Mr. Owen said the water drainage is going to follow the same path as it does currently. The path of the water flow will not alter in any way.

Ms. Barnes asked if the fence was going up and down with the topography. Mr. Owen said there would not be significant or massive changes with the topography.

Ms. Barnes asked about the west end that parallels Valley Springs Road. Mr. Owen said they are not getting too close to the swale and they are not going all the way up to the setback on

that side. Mr. Owen said it will probably be at the forty-foot mark instead of the twenty-foot mark and will be well within the setback.

Ms. Barnes asked Mr. Kanipe, if the fence blocked the drainage, what would be the process for resolving this issue? Mr. Kanipe said once water crosses onto private property, the Town's responsibility is to get it from the road or from the road right-of-way to the private property. If there were a backup issue, typically the Town would not be involved if it is not impacting the Town. Mr. Clarke said Mr. Kanipe's statement was correct and this would be a private property issue until it comes on the Town's right-of-way. Mr. Kanipe also suggested checking with the HOA covenants with the Ramble.

Mr. Clarke noted for the record that Ms. Martha Barnes recused herself from deliberating or voting on this matter because this is her neighbor.

DELIBERATION AND DETERMINATION:

Ms. Lynn Kieffer recited the facts and said Mr. David Owen at 82 Chauncey Circle is requesting a Special Use permit for an accessory structure in the rear yard setback. It will be a four-foot high fence which has already been approved by The Ramble homeowners association. It is compliant with all the setbacks. No neighboring property owners have objected.

Ms. Rhoda Groce moved that a Special Use Permit as requested be granted to Mr. David Owen of 82 Chauncey Circle for installation of a fence in the rear yard 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 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. Lowell Pearlman seconded the motion. Chairman Goosmann took roll call. Ms. Martha Barnes was recused from this matter. Mr. Chandler voted aye, Mr. Lowell Pearlman voted aye, Ms. Lynn Kieffer voted aye, and Ms. Rhoda Groce voted aye. The matter passed unanimously.

HEARING (Evidentiary):

The next matter taken into consideration was a request for a Special Use Permit at 31 Cedar Hill Drive for the replacement of an accessory structure (fence) in the rear yard and a variance to exceed fence height requirements by 1 foot and 4 inches. Mr. Robert Chandler shepherded the matter.

Mr. Cerasoli said the existing fence is a picket fence and its appearance is rather ragged. The fence runs parallel to Don and Susan Watson. This is where the drop off is between the two properties. The current fence is not high enough because of the drop off and because of the stakes between the pickets. A seven-foot fence is requested to allow adequate privacy. In order to accomplish having full and complete privacy to the top of the windows, an additional 4 inches is requested from the original application. This would accomplish having two things, a privacy fence instead of a picket fence and for security. This fence would not be visible except for Don and Susan Watson's property. Both sides of the fence would be identical and aesthetically pleasing for the Watsons. There are also two gates involved, one on each end, which will also be replaced. Mr. Chandler asked about buffering. Mr. Cerasoli said on the driveway side, they have already done some landscaping and if the Watson's were not pleased then the Cerasoli's would be willing to plant the proper buffering if necessary. Mr. Don Watson recommended approval as submitted.

DELIBERATION AND DETERMINATION:

Mr. Robert Chandler restated the facts and said Mr. Roger Cerasoli is applying for a Special Use Permit at 31 Cedar Hill Drive for an accessory structure in the rear yard to replace an existing fence. Mr. Cerasoli is also applying for a variance, which is for the height of the fence, which is for 7'4". The hardship is due to topography issues, specifically the steep drop off between the rear of the properties. Additional buffering will be placed if requested from neighboring property owners. There were no additional comments or questions.

Mr. Clarke said the Board concluded there was a practical difficulty that allowed the grant of variance due to topographic issues. It is also a hardship because the Cerasoli property sits above the lower property.

Ms. Lynn Kieffer made a motion to grant a Special Use Permit to Mr. Roger Cerasoli at 31 Cedar Hill Drive for a fence in the rear yard and a Variance to exceed the fence height maximum per the Town's regulations. 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. 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. Kieffer 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.

Ms. Rhoda Groce seconded the motion. Chairman Goosmann took roll call. Ms. Martha Barnes voted aye, Mr. Chandler voted aye, Mr. Lowell Pearlman voted aye, Ms. Lynn Kieffer voted aye, and Ms. Rhoda Groce voted aye. The matter passed unanimously.

Chairman Goosmann adjourned the meeting at 4:36 pm. The next Board of Adjustment meeting is scheduled for Monday, March 15th, 2021 at 4:00 pm.

ATTEST:

Greg Goosmann
Chairman

Laura Jacobs
Town Clerk

355 Vanderbilt Rd | Biltmore Forest, NC
Po Box 5352 | Biltmore Forest, NC 28803
P (828) 274-0824 | F (828) 274-8131
www.biltmoreforest.org



George F. Goosmann, III, Mayor
Doris P. Loomis, Mayor-Pro Tem
Fran G. Cogburn, Commissioner
E. Glenn Kelly, Commissioner

Jonathan B. Kanipe,
Town Manager

MEMORANDUM

To: Board of Adjustment Members
From: Jonathan Kanipe, Town Manager
Re: Board of Adjustment Case Number 1 (9 Hilltop Road)
Date: March 15, 2021

Special Use Permit for Roof Mounted Solar Panel Installation

A special use permit is requested for roof mounted solar panels on the residence. The Town's Zoning Ordinance considers solar collectors an accessory structure and states they "shall be regulated in accordance with N.C.G.S. 160A-201". Note, the numeration for this statute has changed and is now N.C.G.S. 160D-914. A copy of this statute is attached to this memorandum. As a result, a special use permit must be obtained by the applicant before installation on an existing roof. Solar panels are allowed by right as a part of a new construction design under the Town's Zoning Ordinance.

In addition to the zoning applications and special use permit applications, the applicant has included a schematic showing the placement of the panels and a site plan showing the panels on the home. The layout shows the panels will be located on the rear of the home not facing Hilltop Road.

Zoning Compliance Application

Town of Biltmore Forest

Name

Michael Pope

Property Address

9 Hilltop Rd

Phone

(828) 332-3003

Email

michael.pope@solfarm.com

Parcel ID/PIN Number

964695178800000

ZONING INFORMATION

Current Zoning

R-2

Lot Size

.6 acres

Maximum Roof Coverage

3,520 square feet (Up to .75 acres)

Proposed Roof Coverage Total

616 sq ft

Maximum Impervious Surface Coverage

Up to 1 acre (27.5 percent of lot area)

Proposed Impervious Surface Coverage

n/a

Front Yard Setback

50 feet (R-2, R-3, R-4, and R-5 Districts)

Side Yard Setback

15 feet (R-2, R-3, R-4, and R-5 Districts)

Rear Yard Setback

20 feet (R-2, R-3, R-4, and R-5 Districts)

Building Height

20'

Description of the Proposed Project

Roof mounted solar array

Estimated Start Date

3/29/2021

Estimated Completion Date

4/2/2021

Estimated Cost of Project

\$47,376.00

Supporting Documentation (Site Plan, Drawings, Other Information)

McCrary, ISSUED FOR PERMITTING.pdf

Applicant Signature

Date
2/22/2021

M. Pops

Special Use Permit Application

Town of Biltmore Forest

Name

Michael Pope

Address

9 Hilltop

Phone

(828) 332-3003

Email

michael.pope@solfarm.com

Please select the type of special use you are applying for:

Accessory Structures

The applicant must show that the proposed use will not materially endanger public health or safety or injure value of adjoining or abutting property. In addition, the proposed use must be in general conformity with the plan of development of the town and be in harmony with scale, bulk, height, coverage, density, and character of the neighborhood.

Please provide a description of the proposed project:

Roof mounted solar array

Explain why the project would not adversely affect the public interest of those living in the neighborhood:

Solar energy is good for the environment and the neighborhood. The panels are roof mounted flush with the existing rooflines.

I hereby certify that all of the information set forth above is true and accurate to the best of my knowledge.

Signature

A handwritten signature in black ink, appearing to read "M Pope", written over a horizontal line.

Date

2/22/2021

§ 160D-914. Solar collectors.

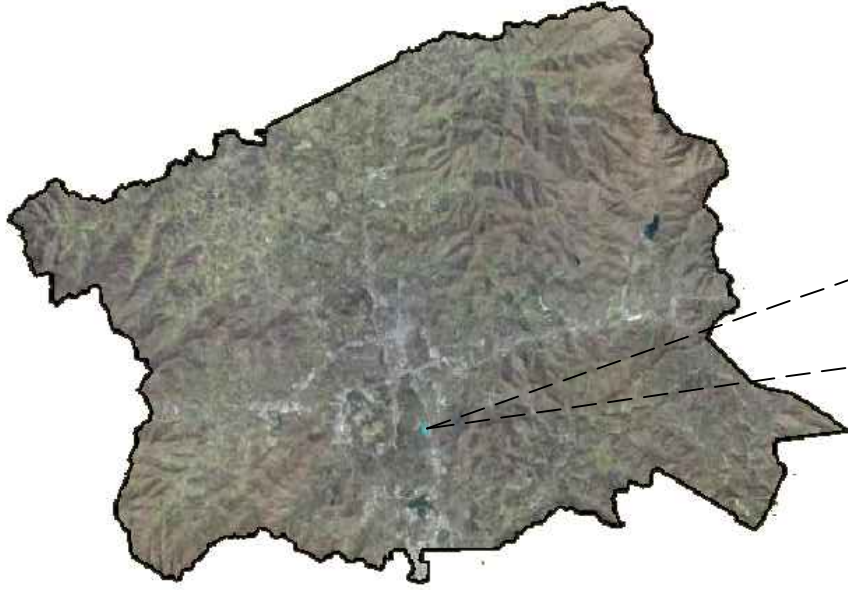
(a) Except as provided in subsection (c) of this section, no local government development regulation shall prohibit, or have the effect of prohibiting, the installation of a solar collector that gathers solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, or generating electricity for a residential property, and no person shall be denied permission by a local government to install a solar collector that gathers solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, or generating electricity for a residential property. As used in this section, the term "residential property" means property where the predominant use is for residential purposes.

(b) This section does not prohibit a development regulation regulating the location or screening of solar collectors as described in subsection (a) of this section, provided the regulation does not have the effect of preventing the reasonable use of a solar collector for a residential property.

(c) This section does not prohibit a development regulation that would prohibit the location of solar collectors as described in subsection (a) of this section that are visible by a person on the ground and that are any of the following:

- (1) On the facade of a structure that faces areas open to common or public access.
- (2) On a roof surface that slopes downward toward the same areas open to common or public access that the facade of the structure faces.
- (3) Within the area set off by a line running across the facade of the structure extending to the property boundaries on either side of the facade, and those areas of common or public access faced by the structure.

(d) In any civil action arising under this section, the court may award costs and reasonable attorneys' fees to the prevailing party. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)



A PHOTOVOLTAIC SYSTEM FOR
 THE McCRARY RESIDENCE
 9 HILLTOP RD.
 BILTMORE FOREST, NC 28803

- 1 TABLE OF CONTENTS
- 2 SITE LAYOUT
- 3 ONE LINE DIAGRAM

1	ISSUED FOR PERMITTING	12.31.20		
	2			
	3			
	4			
	5			
SHEET TITLE: TABLE OF CONTENTS				
<table border="0" style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> <p>PROJECT THE McCRARY RESIDENCE 9 HILLTOP RD. BILTMORE FOREST, NC 28803</p> </td> <td style="width: 50%; vertical-align: top;"> <p>SOLFARM SOLAR CO. 75 GLENDALE AVENUE ASHEVILLE, NC 28803 (828) 332-3003</p> </td> </tr> </table>			<p>PROJECT THE McCRARY RESIDENCE 9 HILLTOP RD. BILTMORE FOREST, NC 28803</p>	<p>SOLFARM SOLAR CO. 75 GLENDALE AVENUE ASHEVILLE, NC 28803 (828) 332-3003</p>
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<p>1</p>				



A1

(32) TRINA 400W MODULES: 12.8 KW DC

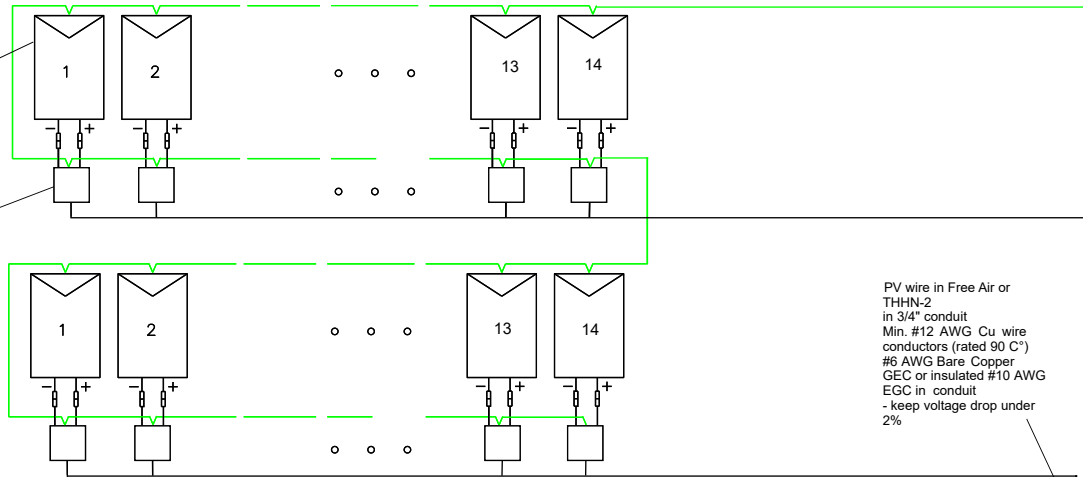
SCALE: 1/16"= 1'-0"

2	PROJECT THE MCGRARY RESIDENCE 9 HILLTOP RD. BILTMORE FOREST, NC 28803	SHEET TITLE: SITE LAYOUT	ISSUED FOR PERMITTING	
	SOLFARM SOLAR CO. 75 GLENDALE AVENUE ASHEVILLE, NC 28803 (828) 332-3003		1	12.31.20
		2	3	4
		3	4	5
		4	5	

All Modules:
 Hanwa Qcell 400W
 Q.PEAK DUO L-G7.2 400
 Quantity: 28
 Pmax: 400 W
 Voc: 48.96 V
 Isc: 10.19 A
 Vmpp: 41.23 A
 Imp: 9.7 A

All Optimizers:
 SolarEdge P401
 Quantity: 28
 Max Input Power: 400 W
 Max Input Voltage: 60 V
 Max Input Isc: 11.75 A
 Max Output Current: 15 A
 Max Output Voltage: 60 V

2 Strings of 14 x 400W Modules.



PV wire in Free Air or THHN-2 in 3/4" conduit
 Min. #12 AWG Cu wire conductors (rated 90 C°)
 #6 AWG Bare Copper GEC or insulated #10 AWG EGC in conduit
 - keep voltage drop under 2%

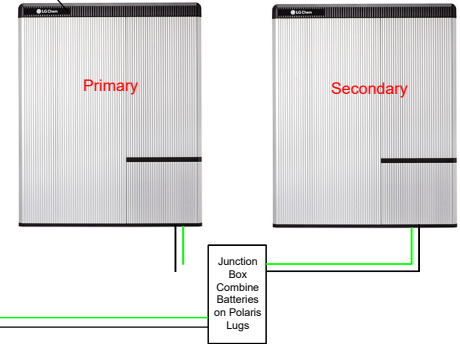
System Size in kW:

- 11.2 kW DC

Maximum Physical Export Capability Requested:

- 7.6 kW AC

Batteries:
 LG Chem RESU10H Type R
 Quantity: 2
 Total kWh: 9.8 kWh
 Ah Capacity: 63 Ah DC
 Max Voltage: 520 V DC
 Max Charge Current: 11.9 A DC
 Max Discharge Current: 14.3 A DC



PHOTOVOLTAIC SYSTEM

AC DISCONNECT

OPERATING VOLTAGE **240** VOLTS

OPERATING CURRENT **32** AMPS

PV SOLAR SYSTEM EQUIPPED WITH RAPID SHUTDOWN

TURN RAPID SHUTDOWN SWITCH TO THE "OFF" POSITION TO SHUT DOWN PV SYSTEM AND REDUCE SHOCK HAZARD IN THE ARRAY

Inverter:
 SolarEdge Energy Hub 7600W
 SE7600H-US
 Quantity: 1
 Max Output Power: 7600 W AC
 Max Output Current: 32 A AC
 Nom Output Voltage: 240 V AC
 Rated Output Power Backup: 6100 W AC
 Max Output Current Backup: 25.5 A AC
 Nom Output Voltage Backup: 240 V AC
 Max Input Power: 15600 W DC
 Max Input Voltage: 480 V DC
 Max Input Current: 20 A DC



AWG #10, 2 wire THWN-2, with AWG #8 ground in 3/4" or larger conduit or trough.

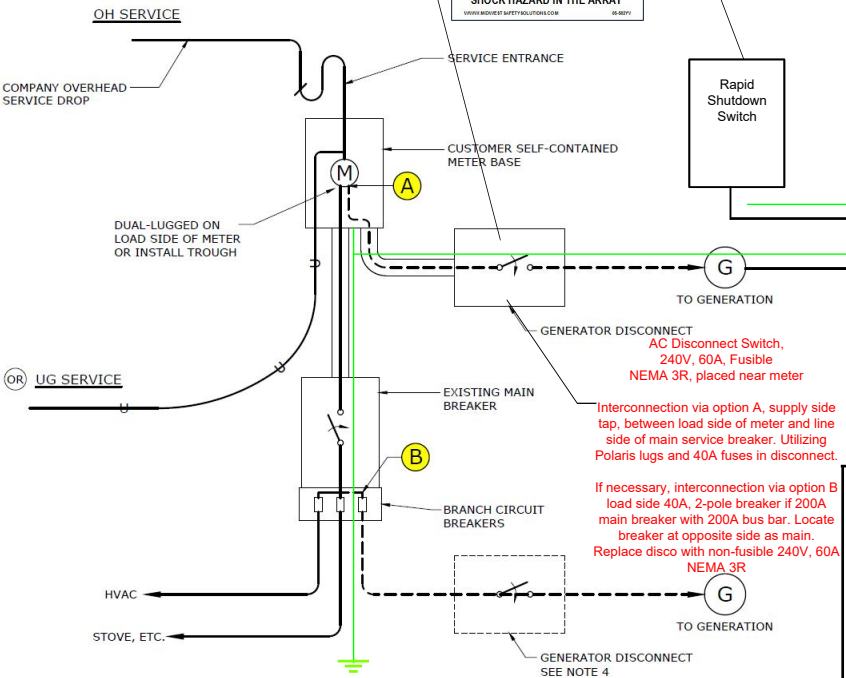
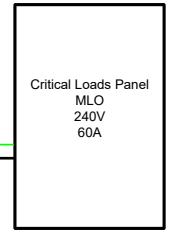
AWG #6 or larger, 3 wire THWN-2, with AWG #10 ground in 3/4" or larger conduit.

SolarEdge Backup Interface BI-EUSGN-01 240V 200A Main Breaker



AWG #4 or larger, 3 wire THWN-2, with AWG #8 ground in 1" or larger conduit.

AWG #4 or larger, 3 wire THWN-2, with AWG #8 ground in 1" or larger conduit.



Interconnection via option A, supply side tap, between load side of meter and line side of main service breaker. Utilizing Polaris lugs and 40A fuses in disconnect.

If necessary, interconnection via option B load side 40A, 2-pole breaker if 200A main breaker with 200A bus bar. Locate breaker at opposite side as main. Replace disco with non-fusible 240V, 60A NEMA 3R



Solfarm Solar Co.
 75 Glendale Avenue,
 Asheville, NC 28803
 (828)-332-3003

Dalton McCrary
 9 Hilltop Rd,
 Asheville, NC 28803
 December 8th, 2020

355 Vanderbilt Rd | Biltmore Forest, NC
Po Box 5352 | Biltmore Forest, NC 28803
P (828) 274-0824 | F (828) 274-8131
www.biltmoreforest.org



George F. Goosmann, III, Mayor
Doris P. Loomis, Mayor-Pro Tem
Fran G. Cogburn, Commissioner
E. Glenn Kelly, Commissioner

Jonathan B. Kanipe,
Town Manager

MEMORANDUM

To: Board of Adjustment Members
From: Jonathan Kanipe, Town Manager
Re: Board of Adjustment Case Number 2 (8 Westwood Road)
Date: March 15, 2021

Special Use Permit for Temporary Accessory Structure (Fence) in Front Yard Variance Request for Temporary Accessory Structure (Fence) in Front Yard

Note: This is an amended application for a temporary fence from a prior application in June 2020.

A special use permit and variance is requested for the installation of a temporary fence in the front yard. The applicant presented an application in June 2020 to the Board of Adjustment for a permanent fence in the front yard, and this is a continuation of that request. As such, I have provided the original applications from June 2020 as well as the minutes from that meeting for the Board's review. The applicant has placed a temporary fence in the approximate location where this original permanent fence was requested. This new request is to allow the temporary fence to remain in place through December 31, 2021.

Attached Materials from June 2020 Board of Adjustment Meeting

- (1) Zoning Application
- (2) Special Use Permit Application
- (3) Variance Application
- (4) Minutes from June 2020 Board of Adjustment Meeting

In addition to the above materials, I have included minutes from various Board of Adjustment meetings since 2010 wherein the applicant has provided plans and proposals for various landscaping elements, including other fences. My intent in providing this information is for the Board to have a full view of the prior requests, approvals, and considerations for this property.

Attached Minutes from Prior Board of Adjustment and Design Review Board Meetings

- (1) Approvals for stone retaining walls and replace temporary fencing in pool area – November 15, 2010
- (2) Approvals for Replacement fencing and additional fencing in side yards – March 14, 2011
- (2a) Minutes from Design Review Board regarding fencing approval – March 17, 2011
- (3) Approval for Freestanding gates – September 25, 2017

355 Vanderbilt Rd | Biltmore Forest, NC
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George F. Goosmann, III, Mayor
Doris P. Loomis, Mayor-Pro Tem
Fran G. Cogburn, Commissioner
E. Glenn Kelly, Commissioner

Jonathan B. Kanipe,
Town Manager

February 3, 2021

Chuck Hutchison
8 Westwood Road
Asheville, NC 28803

Re: Fence Installation at 8 Westwood Road

Dear Mr. Hutchison,

You submitted an application to the Biltmore Forest Board of Adjustment for a special use permit for a permanent fence and for a variance to locate a portion of the permanent fence in the front yard. When you submitted the application, you had already installed a temporary fence in the approximate location of the permanent fence.

The Board of Adjustment considered the request at its June, 2020 meeting. Following discussion, you withdrew the application for special use permit and variance. A copy of the pertinent minutes from your matter are attached to this correspondence.

The temporary fence is still in place. The purpose of this letter is to notify you the fence must be removed on or before March 3, 2021. In the alternative, you may submit an application for special use permit and variance to the Board of Adjustment.

I have attached sections 153.049 and 153.029 of the Town's Zoning Ordinance to this correspondence in addition to the aforementioned minutes from June 2020. Please contact me with any questions. The Town appreciates your prompt attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jonathan B. Kanipe".

Jonathan B. Kanipe
Zoning Administrator

Attachments: Board of Adjustment Minutes – June 2020
Zoning Ordinance Sec. 153.029
Zoning Ordinance Sec. 153.049

§ 153.029 ACCESSORY STRUCTURES AND BUILDINGS.

(A) Accessory structures and/or necessary buildings shall not detract from nor interfere with adjacent properties. No accessory structure or building shall be constructed, erected, or located within any front yard or within any side yard or rear yard setback.

(B) (1) In addition, the following standards are established for accessory structures and accessory buildings:

- (a) The maximum number of accessory buildings permitted on a lot shall be one;
- (b) The maximum roof coverage area for accessory buildings shall be 750 square feet;
- (c) The maximum height for accessory buildings shall be 25 feet;
- (d) The accessory building must be screened by vegetation or other buffer as set forth in §153.008;
- (e) The accessory building must be located behind a line parallel to the rear of the principal structure on the lot;
- (f) The accessory building must be designed in the same architectural style as the principal structure;
- (g) Any accessory structure and/or accessory building shall be included in the calculation of allowable roof coverage and allowable impervious surface coverage on the lot pursuant to §§ 153.043 and 153.048; and
- (h) Solar collectors shall be regulated in accordance with G.S. § 160A-201.

(2) For all satellite dishes less than 24 inches in diameter, an application for a zoning compliance certificate shall be made directly to the Zoning Administrator; the Zoning Administrator shall issue a zoning compliance certificate.

(3) Fences, gates, and walls shall be regulated in accordance with §153.049 of this Zoning Ordinance.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013; Ord. passed -- ; Ord, passed 2-11-2020)

Editor's note:

This amendatory language was passed during a Board meeting, July 9, 2013

§ 153.049 FENCE, GATE AND WALL REGULATIONS.

The Board of Commissioners for the Town of Biltmore Forest that the following amendments to the Zoning Ordinance and subsequent regulations be placed on fence, gate, and wall construction and replacement as of the effective date of this section.

(A) New fences, gates or walls may be approved by the Board of Adjustment as a special use, so long as the gate, fence or wall meets the following requirements.

(1) 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).

(2) Mature vegetation or other buffering sufficient to screen the fence, gate, or wall from neighboring properties shall be required to the extent necessary.

(B) A driveway gate and supporting columns may be approved by the Board of Adjustment as a special use so long as it meets the following requirements:

(1) The driveway gate and columns shall not be located in the front or side yard setback of a property.

(2) The driveway gate shall not be more than eight feet in height.

(3) The driveway gate must provide access for emergency services and first responders. This may be done via a lockbox code, strobe or siren activation switch, or other method with demonstrated reliability.

(4) The driveway gate must open wide enough to provide for ingress and egress of emergency vehicles. The minimum acceptable standard is for the gate access to be 14 feet wide with a 14 foot minimum height clearance.

(C) Replacement of existing fences, gates, and walls shall be approved by the Board of Adjustment as a special use so long as the replacement fence is constructed of materials deemed acceptable in § 153.049(D) and meets the requirements below. A special use permit application to replace an existing fence, gate, or wall shall include a photograph of the existing fence or wall, specify the type of fence, gate, or wall, include a map or sketch depicting the height and length of the fence, gate, or wall and state whether or not the fence, gate, or wall is located within any setbacks.

(1) Existing chain link fences or gates shall not be replaced with new chain link fences or gates.

(2) Existing fences, gates, or walls in the front yard shall not be replaced. No new fences, gates, or walls shall be allowed in the front yard.

(3) Repair of more than half of an existing fence, gate, or wall shall be considered a replacement and shall be subject to this section.

(D) Acceptable materials and standards for fences and walls/maintenance. The following materials and standards for fences and walls shall be deemed acceptable.

(1) Wooden fencing or gates shall be of natural color or painted in a manner compatible with the residence and the lot.

(2) Non-wooden fencing and gates shall be black, dark green or brown and shall blend with surrounding trees or vegetation.

(3) No new chain link fencing or gates shall be allowed.

(4) Fences shall not exceed six feet in height except that fences designed to prevent deer or other wildlife from entering the property shall not exceed ten feet in height. Deer fences shall be constructed in accordance with North Carolina Wildlife Resources Commission standards for "Permanent Woven Wire Fencing" and "Permanent Solid-Wire Fencing." Copies of these standards are available at the Town Hall or at the following web address (<https://www.nxwildlife.org/Learning/Species/Mammals/Whitetail-Deer/Fencing-to-Exclude-Deer#42041180-permanent-fencing>).

(5) Walls should be constructed of stone or similar material, and shall be compatible with the construction materials of the house located on the same property.

(6) When a fence, gate or wall is not properly maintained or fails to comply with condition(s) imposed by the Board of Adjustment, the town shall require the property owner to repair the fence, gate, or wall, or, remove the fence, gate, or wall at the property owner's expense. If the property owner fails to repair or remove the fence, gate, or wall, the town may remove the fence, gate, or wall and recover the cost of removal, including the cost of disposal, if any, from the property owner.

(Ord. passed 2-11-2020)

HEARING (Evidentiary):

A Special Use Permit is requested for construction of a fence and driveway gate at 8 Westwood Road. A Variance is requested for location of the fence in the front yard setback, as well as extension of fencing to connect with fencing located in the setback. Ms. Rhoda Groce shepherded the matter. Mr. Hutchison is asking for a Variance to extend the side fence on both sides of his property as well as a Variance for the distance on the front of the property. The plant material would conceal both sides of the fence.

Ms. Groce said our current regulations do not approve fencing in the front yard. Mr. Clarke said accessory structures and fences are not allowed in the front. Mr. Hutchison asked if there were any fences erected within the past five years. Mr. Clarke said there are some homes with front yard fences but was unsure when they were erected. Mr. Clarke said the Board of Commissioners has recently amended the fence ordinance and makes it pretty clear fences are not allowed in front yards. Mr. Clarke said Mr. Hutchison is allowed to ask for a Variance but the Ordinance prohibits fences in the front yard.

Ms. Kieffer said to Mr. Hutchison that he currently has a temporary fence, which runs along the front. Mr. Hutchison agreed but said it doesn't look as aesthetically pleasing as a permanent fence would. Ms. Groce said it would be an issue of visibility on Westwood Road. Ms. Kieffer said as far as the gate goes, has Mr. Hutchison considered a cattle gate. Mr. Hutchison said yes, as a last resort. He does not find cattle gates attractive. Mr. Hutchison asked if the fence were not visible at all, would the Board members approve the front yard fence. Ms. Groce said front yard fences are not allowed.

Mr. Clarke said it is acceptable for Mr. Hutchison to have a temporary fence in the front yard. Mr. Clarke wasn't sure how long temporary is defined as but it sounds like the current fencing is protecting his plants. Mr. Hutchison said it was erected to keep deer out and he wanted to put the fence up to get feedback and see if there are any issues or concerns from residents/neighbors. To Mr. Hutchison's knowledge, he has not heard any feedback.

Dr. Landau says this does put the Board in a very difficult position because front yard fencing is not allowed. It also opens the door to other people putting front yard structures in their front yard who may not be as diligent as Mr. Hutchison. Dr. Landau said Mr. Hutchison might want to withdraw the application for now and talk to neighbors about their current thoughts about this matter. Dr. Landau does not think that as members of the Board of Adjustment have any options but to enforce the existing rule; he does not like it, but this is what they have to do at this time. Mr. Hutchison appreciated the comments.

Ms. Kieffer also suggested talking to the Board of Commissioners. Ms. Kieffer suggesting tabling the matter and going to the Board of Commissioners or just sticking with the temporary fence. Dr. Landau also suggested speaking with the Board of Commissioners as well. Mr. Goosmann asked if there were any additional comments.

Mr. Hutchison decided to withdraw the proposal and will come back to the Board later.

Dr. Landau asked if there was a way to make the temporary fence less visible to the neighbors. Mr. Hutchison said he can landscape his neighbors' side of the fence so the temporary fence won't be visible. Mr. Paul Dismukes inquired about an easement at this property. Mr. Goosmann said there was no easement discussed. Mr. Goosmann said this is regarding Mr. Hutchison possibly allowing a temporary fence or some other proposal. Mr. Goosmann said Mr. Hutchison may need to seek approval from the Board of Commissioners to allow something to be altered in the existing Ordinance.

DELIBERATION AND DETERMINATION:

Mr. Hutchison said within the next 30 days, he would have a discussion with Mayor Goosmann for the proposal in accepting this request to change the Ordinance. When Mayor Goosmann gives Mr. Hutchison an idea, Mr. Hutchison will use this as his temporary timeline.

Mr. Hutchison withdrew his request and will resubmit a new proposal at the next Board of Adjustment meeting. Mr. Goosmann asked if Mr. Dismukes was comfortable with this. Mr. Dismukes said yes. There were no further questions or concerns regarding this proposal.

HEARING (Evidentiary):

The next matter was regarding a review of required landscaping for new house construction at 22 Cedarcliff Road. Ms. Lynn Kieffer shepherded the matter. Mr. Olesky said they are looking for a review of the Variance they were granted for their retaining wall for the parking space next to their workshop. Mr. Connelly said there are two plans for the Board to look at. The idea is to provide a buffer as dense as possible but also make sure the plant species do not overcrowd themselves. It would be a space of approximately 120-140 feet. There would be approximately 14-16 trees. It would consist of fast growing trees, which means they may grow up to three feet per year. All of the trees are evergreen. If there were cooperation from the neighbor, they would like to space the landscaping in a triangular pattern. This would make the planting denser. The stand-alone version would be to stick to the Olesky property.

Ms. Kieffer asked when the house construction would be completed. The completion of the construction would be approximately September or October. Ms. Kieffer said she had doubts anything would be done until the construction of the retaining wall is complete. Mr. Olesky asked if the Board could clarify as early as possible if the wall needs to be moved, it would be very helpful and take up much less time and expense.

Ms. Kieffer clarified there are two different types of plans, one is on the Olesky property and the other one is a plan where there is a staggering of trees on the Reynolds' property. The Reynolds' also want the retaining wall moved. Mr. Clarke said this is a tough issue for the Board because they issued a Variance and Special Use Permit for the project. One of the conditions was the landscaping be sufficient and satisfactory to the neighbor (Reynolds). It is difficult for the Board to make a determination if the landscaping is sufficient until the landscaping is actually put in. Mr. Clarke suggested not making a ruling at this time.

Mr. Goosmann said as a Board, they cannot require any work to be done on the Reynolds' side without their permission. The Board's decision did not require any landscaping on the

March 3, 2021

Jonathan B. Kanipe
Zoning Administrator
Town of Biltmore Forest

Re: Fence Installation at 8 Westwood Road

Dear Mr. Kanipe,

I am responding to your letter of February 3, 2021.

In June of 2020 the Board of Adjustments considered my request for a special use permit to replace the temporary fence in my front yard with a permanent fence. After discussions and listening to comments from board members, I withdrew my request and committed that I would come back to the board at a later date.

As the Board of Adjustments is aware, the French Broad Garden Club, a member of Garden Clubs of America, is sponsoring my garden for acceptance into the Smithsonian Institute's Gardens of America Series. One of the requirements for application is the submission of photographs of the garden taken during each of the four seasons - Spring, Summer, Fall and Winter. Winter photography has been completed with the remaining three seasons scheduled for completion in 2021.

I am requesting that the front yard temporary fence remain in place until December 30, 2021 at which time I will submit a plan for a permanent solution for fencing my front yard. The current protection my temporary fence is providing ensures that the photographs of my garden display its' intended beauty, not the damage caused by the ravaging of deer.

Respectfully submitted,

A handwritten signature in cursive script that reads "Chuck Hutchison".

Chuck Hutchison

Zoning Compliance Application

Town of Biltmore Forest

Name

Charles Hutchison

Property Address

8 Westwood Rd

Phone

(828) 450-6044

Email

Chuckhutchison72@gmail.com

Parcel ID/PIN Number

ZONING INFORMATION

Current Zoning

R-1

Lot Size

1.65 acers

Maximum Roof Coverage

5,500 square feet (Up to 1.5 acres)

Proposed Roof Coverage Total

na

Maximum Impervious Surface Coverage

1-3 acres (25 percent of lot area)

Proposed Impervious Surface Coverage

na

Front Yard Setback

60 feet (R-1 District)

Side Yard Setback

20 feet (R-1 District)

Rear Yard Setback

25 feet (R-1 District)

Building Height

40'

Description of the Proposed Project

Setback of 45' in the front and 5' on the sides. The requested setback takes advantage of the existing dense plant material that conceals the existence of any fence.

Estimated Start Date

6/1/2020

Estimated Completion Date

6/8/2020

Estimated Cost of Project

\$27,000.00

Supporting Documentation (Site Plan, Drawings, Other Information)

Applicant Signature

Cruck Hutchins

Date

4/27/2020

VARIANCE APPLICATION

Town of Biltmore Forest

Name

Charles Hutchison

Address

8 Westwood Rd

Phone

(828) 450-6044

Email

Chuckhutchison72@gmail.com

Current Zoning/Use

Residential

Requested Use

residential

APPLICATION REQUIREMENTS: An application to the Board of Adjustment for a variance must be submitted to the Town of Biltmore Forest Town Manager at least 21 days prior to the meeting at which the application will be considered. A pre-application meeting with Town staff is required prior to application submittal to the Board of Adjustment.

What would you like to do with your property?

Erect fencing and a privacy gate to prevent wildlife from decimating my current and planned landscape design.

What does the ordinance require?

Front yard structures are not permitted without Board of Adjustment Approval.

BOARD OF ADJUSTMENT: N.C.G.S. 160A-388(D) requires that the Board of Adjustment shall vary the provisions of the Zoning Ordinance only upon a showing of ALL the items below. The Board of Adjustment must follow strict procedure and all determinations must be decided by a concurring vote of four-fifths of the members of the Board. It is important to provide detailed supporting documentation for the Board of Adjustment to review. If necessary, additional sheets may be attached to this application.

REQUIRED FINDINGS: Please provide a thorough response to each.**Unnecessary hardship would result from the strict application of the ordinance.**

I have invested over 21000 hours and hundreds of thousands in my garden so that I may earn the privilege of being accepted into the Smithsonian Institute of American Private Gardens. Without the ability to protect my plantings and design from the ravages of animals I have no chance of ever realizing my aspiration.

The hardship results from conditions that are peculiar to the property, such as location, size, or topography.

Situated between the Blue Ridge Parkway and the Biltmore Estate wildlife are attracted to my property and all other properties in the Town of Biltmore Forest.

The hardship did not result from actions taken by the applicant or the property owner.

See above

The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

Requested fencing is consistent in style, and scale with all other properties within the city that has existing

fencing.

I hereby certify that all of the information set forth above is true and accurate to the best of my knowledge.

Signature

Crunch Hutchison

Date

4/27/2020

Special Use Permit Application

Town of Biltmore Forest

Name

Charles Hutchison

Address

8 Westwood Rd

Phone

(828) 450-6044

Email

Chuckhutchison72@gmail.com

Please select the type of special use you are applying for:

Accessory Structures

The applicant must show that the proposed use will not materially endanger public health or safety or injure value of adjoining or abutting property. In addition, the proposed use must be in general conformity with the plan of development of the town and be in harmony with scale, bulk, height, coverage, density, and character of the neighborhood.

Please provide a description of the proposed project:

Erection of a 5' black metal fence (picture to be provided) in the front of the property and a 5' entrance gate into the driveway.

Explain why the project would not adversely affect the public interest of those living in the neighborhood:

Because of the intended design and location of plant material as well as the contour of the land the fence will not be visible to my neighbors or to traffic passing in front of my property.

I hereby certify that all of the information set forth above is true and accurate to the best of my knowledge.

Signature

Chuck Hutchison

Date

The following pages are minutes from Board of Adjustment and Design Review Board Meetings related to previously approved plans at 8 Westwood Road

MINUTES OF THE BOARD OF ADJUSTMENT MEETING
HELD MONDAY, SEPTEMBER 25, 2017

The Board of Adjustment met at 4:00 p.m. on Monday, September 25, 2017.

Members present: Goosmann, Groce, Kieffer, Landau, Chandler, and Pearlman. Mr. Jonathan Kanipe, Town Manager, and Mr. William Clarke, Town Attorney, were present.

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

Mr. Goosmann swore in the following:

Mr. Mitch Underseth

Mr. Jonathan Kanipe

The meeting minutes from Monday, August 28, 2017 were presented. There were a few changes that needed to be made. The minutes were approved pending correction by Mrs. Lynn Kieffer. Mrs. Rhoda Groce seconded the motion. The motion was unanimously approved.

HEARING (Evidentiary):

Mr. Chuck Hutchison, 8 Westwood Road, requests a Conditional Use Permit for landscape plan improvements including two free standing gates. Mr. Hutchison was absent and Mr. Jonathan Kanipe described the project for Mr. Hutchison.

Mr. Hutchison would like to have two free standing gates that will not be connected by a fence. They will be free standing. The purpose of this is to create a garden path shielded by large conifers as shown in the illustrations. They are snowflake and cedar evergreens. There will be one of those on either side of the gate that is on the right hand side of the property if you are facing it from the road. It will be shielded from the road and there will be other shrubs around the property. It will taper in around the dry creek bed and come around to the other gate. Other trees will be planted near the stone wall that he has created. The last picture in the packet is a large specimen conifer and Mr. Kanipe indicated that Mr. Hutchison said that will be planted behind the dry creek bed.

Mr. Kanipe stated that Mr. Hutchison had several approvals in the past from the board for landscape plans including a fence around the swimming pool and for a retaining wall that also created a planting bed in front of the swimming pool. Chairman Goosmann said this is located in a crevice below the road. One of the trees will be sixteen (16) feet high and the gate will not be visible from the road. Mr. Hutchison also relayed to Mr. Kanipe that if any additional screening is required, Mr. Hutchison will have them planted. Dr. Rich Landau asked if the gates are an architectural feature rather than an accessory structure in the front yard. Mr. Clarke said they are not in the front yard, they are in the side yard. Chairman Goosmann said this will not be visible from the road because it is so far down. Mr. Kanipe stated the second week in October is when the landscaping will be brought in to buffer the gates.

DELIBERATION AND DETERMINATION:

Mrs. Lynn Kieffer recited the facts of the case. Mr. Chuck Hutchison of 8 Westwood Road is requesting a Conditional Use Permit for a landscape plan and to include two free standing gates. As part of the landscaping plans, it includes mature trees that will buffer these trees from the road. Additional buffering will be added if there are concerns from the neighbors.

Mrs. Rhoda Groce moved that a Conditional Use Permit be granted to Mr. Chuck Hutchison of 8 Westwood Road for a landscape plan including two free standing gates and the facts as recited by Lynn Kieffer and her summation be accepted as findings of fact to support this grant. The Board has inspected this site and no neighboring property owner has objected.

Mrs. Groce further moved that granting this Conditional 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) and (3) of the above ordinance. The applicant has been informed that he 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. The motion was passed unanimously.

Mr. Pearlman made a comment and stated he is uncomfortable with the Town Manager presenting plans for the homeowner for legal reasons. Mr. Clarke indicated that he was comfortable with Mr. Kanipe explaining the facts of the case but having a representative or the homeowner there is what should really be done. Mr. Pearlman suggested the Board not look at the case unless the homeowner or their representative is present. Chairman Goosmann reiterated that if anyone was uncomfortable with the facts and presenting a case, the matter could be tabled. The homeowner was willing to wait but had a preplanned event to attend. Mr. Hutchison was willing to wait for the next meeting, but the gates were already installed and additional landscaping was occurring.

Chairman Goosmann adjourned the meeting at 4:22 pm.

The next Board of Adjustment meeting was set for Monday, October 16th at 4:00 pm.

ATTEST:

Greg Goosmann
Chairman

Jonathan B. Kanipe
Town Manager

MINUTES OF THE BOARD OF ADJUSTMENT MEETING
HELD MONDAY, NOVEMBER 15, 2010

The Board of Adjustment met at 4:00 p.m. on Monday, November 15, 2010.

Members present: Beatty, Fleming, Freeman, Goosmann and Richie. Mr. Nelson E. Smith, Zoning Administrator, and Mr. Wilburn O. Brazil, Town Counsel, were also in attendance.

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

Vice-Chairman Goosmann swore in the following:

Mr. Ron Fagan
Mr. Chuck Hutchison
Mr. Steven Lee Johnson
Dr. Tech Penland
Ms. Deborah Turner

Mr. Chuck Hutchison, 8 Westwood Road, was applying for a conditional use permit for an addition to a retaining wall and temporary fencing to secure the pool area, near where a gazebo has been removed, and a future addition is being planned. Mrs. Beatty asked about the stone wall. Mr. Hutchison stated that he had replaced an existing wall and added a second. Mrs. Beatty asked the height of the wall. Mr. Hutchison stated that the replacement retaining wall was eighteen inches tall and twenty three feet in length as it turned the corner, the second wall created a terrace in the same plant bed for easier access.

Mrs. Beatty asked about the temporary construction fencing. Mr. Hutchison stated that a gazebo was removed that formed part of the pool enclosure and this temporary fencing secures the pool area.

Mr. Hutchison apologized and stated that he was a new resident and did not realize that approval was needed as the retaining wall was already in existence.

Mrs. Beatty stated in summation, that Eileen and Chuck Hutchison, 8 Westwood Road, were applying for a conditional use permit for two stone walls, one a replacement and an additional retaining wall to create a terraced planting bed. The walls are both 18-inches in height and approximately 23-feet in length. Also, temporary construction fencing to secure the pool area, where a gazebo had been removed. The Board had visited the site and neighboring property owners had been advised of this meeting.

Motion was made by Mr. Richie that a conditional use permit as requested, be granted to Eileen and Chuck Hutchison, 8 Westwood Road, for retaining walls and temporary fencing to secure the pool area, and that facts as recited by Mrs. Beatty in her summation be accepted as

findings of fact to support this grant. The Board has inspected the site and no neighboring property owner has objected.

Further, he moved the Board to find that granting this conditional use permit (a) would not materially endanger the public health or safety if located where proposed and developed according to the plan 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 1005.03(2) and (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 Zoning Administrator. The motion was seconded by Mrs. Fleming and unanimously approved.

MINUTES OF THE BOARD OF ADJUSTMENT MEETING
HELD MONDAY, DECEMBER 13, 2010

The Board of Adjustment met at 4:00 p.m. on Monday, December 13, 2010.

Members present: Beatty, Cogburn, Freeman, Goosmann and Richie. Mr. Nelson E. Smith, Zoning Administrator, and Mr. Wilburn O. Brazil, Town Counsel, were also in attendance.

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

Chairman Cogburn swore in the following:

Mr. Chuck Hutchison

Motion was made by Mr. Richie to approve the minutes of the November 15, 2010 meeting with corrections. The motion was seconded by Mr. Freeman and unanimously approved.

Mr. Chuck Hutchison, 8 Westwood Road, was applying for a variance to exceed the roof coverage for an addition. Mrs. Beatty presented plans of the proposed project and photographs of the location.

Chairman Cogburn asked if he had spoken with the Dismukes at 10 Westwood Road. Mr. Hutchison stated yes and they had no objections. Mr. Dismukes had pointed out that even in the winter the area was well buffered. Mr. Hutchison stated that there was substantial landscaping work to be done on the property and that necessitated buying a tractor. They have a three car garage and three cars so in order for the tractor to be in the garage, one of the cars was outside all the time. In order to provide storage for the tractor and an area for fitness equipment they had designed a small addition.

Chairman Cogburn asked about the door on the side of the proposed addition.. Mr. Hutchison stated that it was an overhead garage door that didn't look like one.

Mrs. Beatty asked where the fence and the gate would go. Mr. Hutchison stated that the existing white picket fence would be replaced with black wrought iron fence. The 49-foot section would be 4-inches taller and Mr. Hutchison presented a photograph and noted that the gate shown would be installed between the building and the wall on the other side of the pool.

Chairman Cogburn asked if the fence was in this application. Mr. Hutchison stated no as the replacement fence was to go to the Design Review Board. The Zoning Administrator stated that as the fence had been extended by adding a gate at the other side of the pool, it would need to go before the Board of Adjustment.

Mrs. Beatty asked if there was existing buffering for the fence. Mr. Hutchison stated yes.

Mr. Freeman stated that the roof coverage was 6,913 square feet and asked if that included the garage. The Zoning Administrator stated yes. Mr. Freeman noted that they would be adding 416 square feet to bring it to a total of 7,329 square feet. Mrs. Beatty stated that they had removed the gazebo which had reduced the roof coverage by 200 square feet. The Zoning Administrator confirmed that the 6,913 square feet included the gazebo.

Mr. Hutchison asked if the 385 square feet breezeway was included in the roof coverage. Chairman Cogburn stated yes, it did not matter whether it was heated or unheated space.

Mr. Brazil stated that there was no question that the job would be well done, but what the Board had to consider each individual case and consider whether a precedent was being set. So they try and articulate a hardship that is not self created. Mr. Brazil stated that the hardship stated that when the house was purchased, it already exceeded the permitted roof coverage for the property, which was 5,600 square feet. Mr. Brazil stated that in removing the gazebo there was no inherent right to put back what was removed. Mr. Hutchison needed to demonstrate a hardship in order for the Board to grant a variance.

Chairman Cogburn stated that if they were to erect a building on the same site as the gazebo, with the same square footage as the gazebo that might be a consideration but not adding 216 square feet of roof coverage without a hardship. Mr. Freeman stated that he hoped the hardship was stronger than the house already exceeding the roof coverage for the property.

Mr. Brazil stated that the property is 30.4% below the maximum impervious surface requirements of 14,462 square feet. The house was already 19% over the roof coverage and they are requesting an additional 2.4%. Mr. Brazil stated that this spoke favorably to the application for a variance, but it didn't address it all.

Chairman Cogburn stated that the addition would be visible from the street. Mr. Hutchison stated that it would be partially visible from the street but there is ample vegetation and between that and the topography he thought it would be completely screened in a couple of years.

Mr. Freeman stated that he had no objections to the location; he thought they would do a very good job but they still needed a hardship.

Mrs. Beatty asked if there was any other way to store the tractor without adding so much to the roof coverage. Mr. Hutchison stated that had had tried parking the tractor parallel to the garage doors but there was not enough room for the cars. Mr. Hutchison stated that they could do a lean-to, but he did not think that it would be an aesthetically sound choice for him or his neighbors. Mr. Hutchison stated that they had worked with an architect and this was the smallest space they came up with that would be fully functional.

Mr. Richie asked if they could do without the area for the exercise equipment. Mr. Hutchison stated that this design was the most architecturally effective as far as scale and

working with the style and materials in the house. That even if it was a shorter room, there would still be the same amount of roof coverage.

Mr. Brazil asked about the tractor. Mr. Hutchison stated that it was a 23HP, Bob-Cat, it was 4-feet wide and about 8-feet long with a 60-inch bucket on the front. Mr. Hutchison stated that he will use it to maintain the landscaping on his property.

Chairman Cogburn stated that she was having a hard time justifying the 22% overage on the roof coverage, and asked if Mr. Hutchison would table the request and re-work the design.

Mr. Brazil stated that it was not the responsibility of he or the Board to tell Mr. Hutchison what hardship might be acceptable to the Board. If Mr. Hutchison was able to articulate a hardship the Board would be pleased to hear it.

Mr. Hutchison stated that losing the tractor would be a hardship that he could not maintain the property without the tractor, he would need to hire someone else to do the work and he would like to do the work himself. Mr. Hutchison stated that there were three rooms in the house that faced the garage and every time you looked there all you could see was a car and this detracts from the beauty of the property.

Chairman Cogburn asked if the gazebo had been removed in order to meet the roof coverage. Mr. Hutchison stated no, they took it down because most of the wood had rotted and it was a safety hazard.

Mr. Hutchison stated that he had two knee replacements and needed the tractor in order to be able to work on his landscaping, that if he had to give up something it would be a car.

Chairman Cogburn asked if it was 216 square-feet over what was there. Mr. Hutchison stated yes.

Mr. Brazil asked if they were ready to start this project or would they be able to table this for a month for further consideration or did he want the Board to make a decision. Mr. Hutchison stated that he would like to start as soon as they approved the project. Mr. Brazil stated that the Board wanted to give him every opportunity to present as much information as possible to support his request, however, if the Board voted against the request tonight, Mr. Hutchison would not be able to return to the Board for one year with this application.

Mr. Hutchison stated that he appreciated the opportunity but felt this was the best solution he and the architect could come up with, and he was unsure if waiting a month would provide any more insight.

Mr. Freeman stated that Mr. Brazil had made a few valid points in demonstrating the hardship that might be worth exploring with an attorney.

Mr. Brazil stated that he saw the garage as an accessory structure as it was connected to the house by a breezeway that was 400 square feet of roof coverage. That Mr. Hutchison in creating a storage area for the tractor was not adding a second accessory structure (which is not in compliance) by adding to the residence.

Mr. Freeman suggested that Mr. Hutchison explore every avenue, before they respond to his request. Mr. Richie concurred and said it was a good idea for Mr. Hutchison to consider his application as the hardship needed to be demonstrated before the Board of Adjustment could approve a variance.

Chairman Cogburn stated that there have been similar requests before the Board where they have denied the requests when applicants were not able to effectively demonstrate a hardship.

Mr. Hutchison stated that he would table the application and return in January.

Mr. Brazil presented the following proposed amendment to the Zoning Ordinance for review:

MINUTES OF THE BOARD OF ADJUSTMENT MEETING
HELD MONDAY MARCH 14, 2011

The Board of Adjustment met at 4:00 p.m. on Monday, March 14, 2011

Members present: Beatty, Cogburn, Fleming, Freeman, Goosmann and Richie. Mr. Nelson E. Smith, Zoning Administrator, and Mr. Wilburn O. Brazil, Town Counsel, were also in attendance.

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

Vice Chairman Goosmann swore in the following:

Mr. Dale Hannah
Mr. John Hardy
Ms. Eileen Hutchison
Mr. William McCann
Mr. William Rawls
Ms. Lee Smith
Mr. Nelson E. Smith, Zoning Administrator
Ms. Deborah Turner
Mr. Andrew Willett

Vice Chairman Goosmann asked if the meeting had been properly noticed. The Zoning Administrator, Nelson Smith, stated that it had.

HEARING (Evidentiary):

Eileen & Chuck Hutchison, 8 Westwood Road, were applying for a conditional use permit for replacement fencing and a gate, and addition fencing in the side yard around the pool and two access gates. Mr. Richie stated that the existing 48-feet of picket fencing was being replaced with a 4-foot high wrought iron fence with a 3-foot wide gate. Mrs. Hutchison presented a photograph of the proposed fencing and noted where the fence was located on the plans. Mr. Richie stated that the wrought iron fence would connect to the retaining way along one side of the pool.

Mr. Richie stated that there was an additional 55-foot section of fencing, with a double gate added where the gazebo was located, as well as a gate at the top of the steps accessing the pool area. This fencing will enclose the swimming pool area.

Mr. Freeman asked about the 55-feet of additional fencing. Mrs. Hutchison stated that the fence was four-feet in height the same as the replacement. Mrs. Hutchison stated that there was a gazebo in the area that had been removed that used to enclose the area.

Vice Chairman Goosmann asked if there would be additional landscaping. Mrs. Hutchison stated yes there is existing buffering in front of the picket fence that will remain. Mrs. Beatty stated that the new fence was likely to be less visible than the existing picket fence.

Vice Chairman Goosmann asked the Board would be satisfied if the Zoning Administrator could review the buffering when the fence is installed to determine if additional buffering of the new section of fence is needed. Mrs. Hutchison stated that she agreed to plant more buffering if necessary.

Vice Chairman Goosmann asked for additional comments. There were none.

DELIBERATION AND DETERMINATION

Mr. Richie stated in summation that Eileen & Chuck Hutchison, 8 Westwood Road, were applying for a conditional use permit for replacement fencing and fencing and additional gates in the side yard. The existing 48-feet of picket fencing were being replaced with a 4-foot high wrought iron fence with a 3-foot wide gate. An additional 55-foot section of fencing, with a double gate is being added where the gazebo was formerly located, as well as a 3-foot wide gate at the top of the steps accessing the pool area. This fencing along with the existing retaining wall will totally enclose the swimming pool area. There was existing buffering in front of the picket fence that would remain and if determined by the Zoning Administrator, additional buffering will be planted to screen the new section of fencing. Neighboring property owners had been advised of this meeting.

Vice Chairman Goosmann asked if there were additional fact. There were none.

Vice Chairman Goosmann asked for a motion.

Based upon the foregoing findings of fact summarized by Mr. Richie, a motion was made by Mrs. Beatty to approve a conditional use permit as requested, for Eileen & Chuck Hutchison, 8 Westwood Road, for fencing and gates to enclose a pool area, and that facts as stated be accepted as findings of fact to support this grant. The Board has inspected the site and no neighboring property owner has objected.

Further, based upon the foregoing findings of fact, she moved the Board to find that granting this conditional use permit (a) would not materially endanger the public health or safety if located where proposed and developed according to the plan 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 1005.03(2) and (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 Zoning Administrator. The motion was seconded by Mrs. Fleming and unanimously approved.

HEARING (Evidentiary):

MINUTES OF THE TOWN OF BILTMORE FOREST
DESIGN REVIEW BOARD MEETING OF MARCH 17, 2011

Those in attendance:

Chairman Bruce Johnson
Mrs. Trudy Cappiello
Mrs. Andie Eglinton
Dr. Carl Osborn
Mr. Shane Robichaud
Mrs. Pat Shealy
Mr. Chuck Hutchison
Dr. William McCann
Mr. Andrew Willett
Mr. Nelson Smith, Zoning Administrator

Chairman Johnson called the meeting to order at 5:30 p.m.

There was consensus to approve the minutes of the February 10, 2011, meeting.

Mr. Chuck Hutchison, 8 Westwood Road, presented plans for replacement fencing and a gate addition in the side yard. Mr. Hutchison stated that the existing white picket fence is to be replaced with black wrought iron fencing and additional fencing is to be added on the other side of the pool to enclose the area. There will be three gates and there is ample existing landscaping.

Chairman Johnson asked if the gates were part of the fence. Mr. Hutchison stated yes.

It was the consensus of the Design Review Board to endorse the plans for Mr. Chuck Hutchison, 8 Westwood Road.

Dr. William McCann, 2 East Forest Road, presented plans for a detached garage and additions to a residence. Dr. McCann stated that the existing basement garage is being enclosed to provide a more energy efficient interior. Part of the existing driveway is to be removed and landscaped into gardens. A concrete block retaining wall is to be removed and the drainage improved in the area, then the replacement retaining walls will be stone. There is also an existing covered porch which will be enclosed to provide a study. Also, a portion of the existing wooden deck will be covered and a patio added.

Mrs. Eglinton asked about the architect. Dr. McCann stated that Carolina Landworks were the landscape architects and the garage was a Southern Living House plan and Benny Whitt is the contractor for the garage and Mr. Whitt had done the dormer addition to the house previously.

Dr. McCann stated that a new detached two-story garage was also being added; the second story will be shelled out but not finished at this point. Dr. McCann stated that they received approval from the Board of Adjustment for the 27-ft long version of the garage to allow for additional storage.

355 Vanderbilt Rd | Biltmore Forest, NC
Po Box 5352 | Biltmore Forest, NC 28803
P (828) 274-0824 | F (828) 274-8131
www.biltmoreforest.org



George F. Goosmann, III, Mayor
Doris P. Loomis, Mayor-Pro Tem
Fran G. Cogburn, Commissioner
E. Glenn Kelly, Commissioner

Jonathan B. Kanipe,
Town Manager

MEMORANDUM

To: Board of Adjustment Members
From: Jonathan Kanipe, Town Manager
Re: Board of Adjustment Case Number 3 (296 Vanderbilt Road)
Date: March 15, 2021

Special Use Permit for Accessory Structure (Fence) in Rear Yard Variance Request for Accessory Structure Installation along the Rear Property Line

A special use permit is requested for the installation of a fence in the rear yard. The applicant has also requested the fence be placed on the property line. Approval for this placement requires a variance from the Board of Adjustment. Please note, this property abuts the City of Asheville zoning jurisdiction, so that zoning/use is not subject to the Town of Biltmore Forest zoning jurisdiction.

The Town's fence regulations, found in § 153.049 FENCE, GATE AND WALL REGULATIONS, state that

(A) New fences, gates or walls may be approved by the Board of Adjustment as a special use, so long as the gate, fence or wall meets the following requirements.

(1) 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).

(2) Mature vegetation or other buffering sufficient to screen the fence, gate, or wall from neighboring properties shall be required to the extent necessary.

The variance request is a result of the proposed fence being located along the rear property line. This residential property abuts an incompatible land use, in that it borders commercial buildings within the City of Asheville. The Zoning Ordinance, in § 153.063 BUFFER STRIP AND SCREEN REQUIREMENTS, provides the Board of Adjustment "authority to require that a wall or fence be constructed next to property used for residential purposes when the Board determines that the buffer strip alone does not provide adequate buffering."

In this case, the applicant is the residential property owner and NOT the commercial entity. In addition, the Town is unable to exert any specific zoning authority or extend our zoning jurisdiction to the properties within the City of Asheville. The requirements for the buffer strip, as noted below, allow for the fence to extend along the rear and/or side property line which abuts an incompatible land use.

§ 153.063 BUFFER STRIP AND SCREEN REQUIREMENTS.

(A) Certain land uses are defined in this chapter as being an incompatible land use when developed adjacent to other less intensive land uses. A buffer strip can serve to lessen adverse impacts when development occurs.

(B) The installation of the applicable buffer strip shall be the responsibility of the owner of the developing land use. Buffer strips shall be located on the property of the developing land use between the property line and any vehicular use areas, buildings, storage, service areas, or other area of activity. The buffer strip shall extend along the entire rear and/or side property line which abuts an incompatible land use, up to any required street tree planting strip.

(Note: Sections 1-5 not applicable to this specific situation)

(6) Additional buffering. The Board of Adjustment has the authority to require that a wall or fence be constructed next to property used for residential purposes when the Board determines that the buffer strip alone does not provide adequate buffering. The fence or wall shall be constructed in a durable fashion of wood, stone, masonry materials, or other materials if deemed appropriate and shall be built of material compatible with the principal building. When concrete block is utilized, it shall be finished with stucco on both sides. The materials and design shall be approved by the Board of Adjustment on a case-by-case basis. The finished side of the fence or wall shall face the abutting property. A chain link fence may not be used to satisfy the requirements of this section. Shrubs shall be planted on the applicant's side of the property at the rate of 25 per 100 linear feet; their placing and arrangement shall be the decision of the applicant.

The Town's Police Department has responded several times within the past year to applicant's property for issues related to vagrants or other persons using the area to cut through Hendersonville Road to Vanderbilt Road. The applicants have noted this 6-foot wood privacy fence would stop pedestrians from accessing their property. The proposed description of the fence (6 feet high, wooden privacy fence) complies with fence material requirements in both the fence ordinance and the buffering ordinance above.

Zoning Compliance Application

Town of Biltmore Forest

Name

Reginald Grant

Property Address

296 Vanderbilt Rd

Phone

(828) 713-4384

Email

reggie@alliancernetworking.com

Parcel ID/PIN Number

96477527400000

ZONING INFORMATION

Current Zoning

R-1

Lot Size

.66 acres

Maximum Roof Coverage

3,520 square feet (Up to .75 acres)

Proposed Roof Coverage Total

2191

Maximum Impervious Surface Coverage

Up to 1 acre (27.5 percent of lot area)

Proposed Impervious Surface Coverage

27%

Front Yard Setback

60 feet (R-1 District)

Side Yard Setback

20 feet (R-1 District)

Rear Yard Setback

25 feet (R-1 District)

Building Height

25

Description of the Proposed Project

6 foot tall wood privacy & security fence across rear yard property line. Replace about 25 foot old 4 foot chain link fencing, plus continue 6 foot fencing across the rest of the back, where the adjoining property, Commercial Property located in City of Asheville has neglected their fence which is falling down and looks unsightly.

Estimated Start Date

4/15/2021

Estimated Completion Date

4/30/2021

Estimated Cost of Project

\$9,000.00

Supporting Documentation (Site Plan, Drawings, Other Information)

Applicant Signature



Roy W. Bentley

Date

3/8/2021

VARIANCE APPLICATION

Town of Biltmore Forest

Name

Reginald Grant

Address

296 Vanderbilt Rd

Phone

(828) 713-4384

Email

reggie@alliancernetworking.com

Current Zoning/Use**Requested Use**

APPLICATION REQUIREMENTS: An application to the Board of Adjustment for a variance must be submitted to the Town of Biltmore Forest Town Manager at least 21 days prior to the meeting at which the application will be considered. A pre-application meeting with Town staff is required prior to application submittal to the Board of Adjustment.

What would you like to do with your property?

I desire to place a 6 foot solid wood security fence at the rear property line of our property. Note the rear property line of our property is adjacent to 3 commercial properties located in the City of Asheville. Currently there is a 6 foot fence across the rear property line of 479 & 481 Hendersonville Rd.: both buildings are commercial properties leased out. This section of fencing is badly neglected and is falling apart. Also, there is 4 foot tall chain link fence on our property that is old and in bad shape adjacent to 485 Hendersonville Rd. I desire to have 1 complete and well maintained fence across the entire rear of our property for security and privacy. We have had perpetrators come through the fencing to access Biltmore Forest, especially during the last year.

What does the ordinance require?

I have no clue

BOARD OF ADJUSTMENT: N.C.G.S. 160A-388(D) requires that the Board of Adjustment shall vary the provisions of the Zoning Ordinance only upon a showing of ALL the items below. The Board of Adjustment must follow strict procedure and all determinations must be decided by a concurring vote of four-fifths of the members of the Board. It is important to provide detailed supporting documentation for the Board of Adjustment to review. If necessary, additional sheets may be attached to this application.

REQUIRED FINDINGS: Please provide a thorough response to each.**Unnecessary hardship would result from the strict application of the ordinance.**

lack of security fencing will allow criminal perpetrators and vagrant easy access onto our property and into Biltmore Forest. In fact over the last year I've found two pedestrian trails through the Ivy growing on the ground along our property line where people have been moving from our property onto the next property.

The hardship results from conditions that are peculiar to the property, such as location, size, or topography.

Note the rear property line of our property is adjacent to 3 commercial properties located in the City of Asheville.

The hardship did not result from actions taken by the applicant or the property owner.

Currently there is a 6 foot fence across the rear property line of 479 & 481 Hendersonville Rd.: both buildings are commercial properties leased out. This section of fencing is badly neglected and is falling apart. And there is an old 4 foot tall section of chain link fence on our property adjacent to 485 Hendersonville Rd - Apollo Flame, This chain link fence has been damaged by people crossing over onto our property and into Biltmore Forest from the Apollo Flame shopping center property. This chain link fence was there, old and damaged when we purchased our property years ago.

The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

This requested variance is consistent with increased safety and security of our property and of the town of Biltmore Forest.

I hereby certify that all of the information set forth above is true and accurate to the best of my knowledge.

Signature

A handwritten signature in black ink, appearing to read "Reginald [unclear]", written over a horizontal line.

Date

2/15/2021

Special Use Permit Application

Town of Biltmore Forest

Name

REGINALD GRANT

Address

296 Vanderbilt Rd

Phone

(828) 713-4384

Email

reggie@alliancernetworking.com

Please select the type of special use you are applying for:

Accessory Structures

The applicant must show that the proposed use will not materially endanger public health or safety or injure value of adjoining or abutting property. In addition, the proposed use must be in general conformity with the plan of development of the town and be in harmony with scale, bulk, height, coverage, density, and character of the neighborhood.

Please provide a description of the proposed project:

We seek to build a 6-foot-tall security and privacy fence across our rear property line, which is adjacent to commercial property located in the crime ridden City of Asheville, NC. Currently we have an old 4-foot chain link fence on our property along the section of our rear property line adjacent to the commercial strip center, in Asheville where Appollo Flame is located - 485 Hendersonville Rd, Asheville. Most of our rear property line is adjacent to 481 & 479 Hendersonville Rd, Asheville, NC: Owned by Bob Cooper (the former Cooper Kitchens) currently leased out to Anderson Windows Design Center & Keystone Kitchen & Bath. There is a 6-foot-tall solid wood fence along the rear of 481 & 479 on that property that has been severally neglected and is collapsing. Currently none of our rear property is secure plus, it is an eye sore.

Explain why the project would not adversely affect the public interest of those living in the neighborhood:

This project will improve the security against criminal perpetrators entering Biltmore Forest to commit crimes within the town. Frankly! there needs to be security fencing along the rear property lines of 294, 296 and 300 Vanderbilt to better secure the Town of Biltmore Forest. We have seen intruders on our property as have the next door neighbors at 294 Vanderbilt.

I hereby certify that all of the information set forth above is true and accurate to the best of my knowledge.

Signature



Date

2/13/2021

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§ 153.049 FENCE, GATE AND WALL REGULATIONS.

The Board of Commissioners for the Town of Biltmore Forest that the following amendments to the Zoning Ordinance and subsequent regulations be placed on fence, gate, and wall construction and replacement as of the effective date of this section.

(A) New fences, gates or walls may be approved by the Board of Adjustment as a special use, so long as the gate, fence or wall meets the following requirements.

(1) 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).

(2) Mature vegetation or other buffering sufficient to screen the fence, gate, or wall from neighboring properties shall be required to the extent necessary.

(B) A driveway gate and supporting columns may be approved by the Board of Adjustment as a special use so long as it meets the following requirements:

(1) The driveway gate and columns shall not be located in the front or side yard setback of a property.

(2) The driveway gate shall not be more than eight feet in height.

(3) The driveway gate must provide access for emergency services and first responders. This may be done via a lockbox code, strobe or siren activation switch, or other method with demonstrated reliability.

(4) The driveway gate must open wide enough to provide for ingress and egress of emergency vehicles. The minimum acceptable standard is for the gate access to be 14 feet wide with a 14 foot minimum height clearance.

(C) Replacement of existing fences, gates, and walls shall be approved by the Board of Adjustment as a special use so long as the replacement fence is constructed of materials deemed acceptable in § 153.049(D) and meets the requirements below. A special use permit application to replace an existing fence, gate, or wall shall include a photograph of the existing fence or wall, specify the type of fence, gate, or wall, include a map or sketch depicting the height and length of the fence, gate, or wall and state whether or not the fence, gate, or wall is located within any setbacks.

(1) Existing chain link fences or gates shall not be replaced with new chain link fences or gates.

(2) Existing fences, gates, or walls in the front yard shall not be replaced. No new fences, gates, or walls shall be allowed in the front yard.

(3) Repair of more than half of an existing fence, gate, or wall shall be considered a replacement and shall be subject to this section.

(D) Acceptable materials and standards for fences and walls/maintenance. The following materials and standards for fences and walls shall be deemed acceptable.

(1) Wooden fencing or gates shall be of natural color or painted in a manner compatible with the residence and the lot.

(2) Non-wooden fencing and gates shall be black, dark green or brown and shall blend with surrounding trees or vegetation.

(3) No new chain link fencing or gates shall be allowed.

(4) Fences shall not exceed six feet in height except that fences designed to prevent deer or other wildlife from entering the property shall not exceed ten feet in height. Deer fences shall be constructed in accordance with North Carolina Wildlife Resources Commission standards for "Permanent Woven Wire Fencing" and "Permanent Solid-Wire Fencing." Copies of these standards are available at the Town Hall or at the following web address (<https://www.nxwildlife.org/Learning/Species/Mammals/Whitetail-Deer/Fencing-to-Exclude-Deer#42041180-permanent-fencing>).

(5) Walls should be constructed of stone or similar material, and shall be compatible with the construction materials of the house located on the same property.

(6) When a fence, gate or wall is not properly maintained or fails to comply with condition(s) imposed by the Board of Adjustment, the town shall require the property owner to repair the fence, gate, or wall, or, remove the fence, gate, or wall at the property owner's expense. If the property owner fails to repair or remove the fence, gate, or wall, the town may remove the fence, gate, or wall and recover the cost of removal, including the cost of disposal, if any, from the property owner.

(Ord. passed 2-11-2020)