



**To: Members of the Board of Adjustment, Applicants & Neighboring Property Owners**  
**From: Jonathan B. Kanipe, Zoning Administrator**  
**Date: August 2, 2016**  
**Re: Board of Adjustment Meeting - Aug. 15, 2016 at 4pm**

## **Applicants:**

You or your representative **MUST** be present at this meeting or your application will not be reviewed.

Members of the Board of Adjustment & the Zoning Administrator may visit the property prior to the meeting.

You or your representative **MUST** also attend the Design Review Board meeting on the **Thursday, August 18th at 5:30pm** to complete the approval process.

**Certificates of Zoning Compliance will be issued after review and approval from the Board of Adjustment & Design Review Board.**

## **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 Town Hall M-F 9am-5pm.

You are invited to attend the scheduled meeting and make comment.

The following items of business are scheduled to be addressed by the Biltmore Forest Board of Adjustment on Monday, August 15, 2016 at 4:00pm in the Town Hall Board Room.

1. The meeting will be called to order and roll call will be taken.
2. The minutes of the July 11, 2106 meeting will be presented for approval.
3. Hearing of Cases (Evidentiary Hearings, Deliberations & Determinations):

**Case 1:** Steele and Debby Alphin, 35 Hilltop Road, request a variance to construct a portion of a new driveway in the side yard setback in conjunction with a new home construction.

**Case 2:** James and Susan Selmensberger, 422 Vanderbilt Road, request a conditional use permit and variance to install an irrigation well head within the rear property setback, and additionally, request a conditional use permit and variance to allow permanent installation of a children's play structure.

4. Adjourn.

MINUTES OF THE BOARD OF ADJUSTMENT MEETING  
HELD MONDAY, JULY 11, 2016

The Board of Adjustment met at 4:02 p.m. on Monday, July 11, 2016.

Members present: Goosmann, Landau, Kieffer, Groce, Pearlman, and Chandler. Mr. Jonathan Kanipe, Zoning Administrator, was present. Mr. William Clarke, Town Attorney, was also in attendance.

Chairman Goosmann called the meeting to order at 4:02 p.m.

Chairman Goosmann swore in the following:

Mr. Kenneth Williams  
Mr. Charles Reynolds  
Mr. John Yurko  
Mr. Larry Manofsky  
Ms. Amy Fahmy  
Mr. Houston Hammond  
Mrs. Barbara Veach

The meeting minutes from May 16, 2016 were edited by Mr. William Clarke. The word “unnecessary” should be inserted before the word “hardship” on pages 3, 6, and 7. Dr. Landau was also not present at the May 16, 2016 meeting. Mr. Lowell Pearlman made motion to approve the changes and Dr. Rich Landau seconded the motion. The motion was unanimously approved.

HEARING (Evidentiary):

Mr. Kenneth Williams, 19 Ridgefield Place, presented his plans for the home. Dr. Landau verified this was a Conditional Use Permit. Mr. Clarke verified that this was the case since there was an existing pool (accessory use) on the lot.

Mr. Williams presented his plans for the house. Dr. Landau asked whether any trees would be removed from the site. Mr. Williams indicated that no trees would be removed from

the site. Mr. Williams also indicated that they plan to install landscaping on the northern property line that would buffer the neighbor to the North.

Mr. Williams indicated one small change to the plan which is to take the driveway entrance farther to the eastern side of the property, near the pool, and create a larger turning radius in that location. There were no questions about the new residence construction.

#### DELIBERATION & DETERMINATION

Dr. Landau recited the facts, including that none of the existing trees would be removed. Mr. Williams interjected and said he would also buffer on the southern boundary of the property bordering Carolina Day School.

Mr. Kenneth Williams of 19 Ridgefield Place is applying for a Conditional Use Permit for construction of a new residence.

Mr. Goosmann made a note that the subdivision of the lot created topographical and lot features which dictated where the home could be constructed.

Hearing no additional questions, Mr. Pearlman made the motion to approve the Conditional Use Permit for the single family residence. Mr. Pearlman moved that a Conditional Use Permit and Variance be granted to Mr. Kenneth Williams of 19 Ridgefield Place. A Conditional Use Permit for construction of a new single family residence. The facts as recited by Richard Landau 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.

Mr. Pearlman 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 1005.03 (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.

The motion was seconded by Mrs. Groce. The motion was unanimously approved.

HEARING (Evidentiary):

Mr. Charles Reynolds, 24 Cedarcliff Road, was called forward to present his proposal for a detached garage. Mr. John Yurko, architect, was present to review the proposal as well. Mr. Yurko noted that this was a portion of a four part renovation, but only this portion was required for Board of Adjustments approval.

Mr. Yurko noted that the garage was under 25 feet in height required by the ordinance, and its dimensions were 26x26'8" (746 square feet) which fell within the maximum accessory building requirement. Mr. Yurko described in detail where the garage would fall within the existing stone wall.

Mr. Chandler reviewed the proposal and noted that it seemed to be in compliance. Mr. Chandler did ask about any potential buffering, and Mr. Yurko stated there was significant landscaping in place already which should provide enough buffering. Mr. Reynolds indicated that they would landscape more if necessary. Mr. Yurko further indicated that there would be a four (4) foot landscaping buffer as a result of an asphalt cut which would provide more buffering.

Mr. Larry Manofsky, representing his daughter and son-in-law who purchased the home at 22 Cedarcliff Road, was sworn in to provide remarks. Mr. Manofsky indicated that he felt this proposal was acceptable.

## DELIBERATION & DETERMINATION

Mr. Robert Chandler recited the facts. Mr. Charles Reynolds of 24 Cedarcliff Road is applying for a Conditional Use Permit for a detached garage on the rear of his property which will be 746 square feet. The garage is under 25 feet in height as required by the ordinance and is 26 feet x 26 feet, 8 inches.

Mrs. Lynn Kieffer moved that a Conditional Use Permit be granted for an accessory building and that 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.

Mrs. Kieffer 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 1005.03 (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.

The motion was seconded by Dr. Landau and unanimously approved.

## HEARING (Evidentiary):

The project for Mr. Norwood and Mrs. Sidney Thornton, 6 Southwood Road, was called forward. Mr. Pearlman shepherded this case. Houston Hammond, designer of the home and garage, was present on behalf of the Thorntons. Mr. Thornton has requested permission for a

Conditional Use Permit constructing a detached garage ahead of the initial home design. The structure is 486 square feet, and located on the southern end of the property.

Mrs. Kieffer asked about the design of the house, and Mr. Hammond indicated that the house design would likely be finalized in the next few weeks. Mr. Pearlman asked Mr. Hammond whether the main garage, still to be requested, was attached to the home. Mr. Hammond said the main garage would be attached by a roofline. Mr. William Clarke indicated that the breezeway would need to be enclosed for this portion not to be considered a second, detached structure.

#### DELIBERATION & DETERMINATION

After some discussion, Mr. Hammond asked to table the item until next month.

#### HEARING (Evidentiary):

Mrs. Barbara Veach, 20 Cedarcliff Road, was called forward to review her proposal for a new driveway to circle into the existing drive. They are requesting a Conditional Use Permit and Variance approval to allow construction of a dry stacked retaining wall and new driveway within the front yard and within the side yard setback. Mrs. Veach reviewed her proposal, and indicated that she hoped to stay at a maximum slope of 16-18 degrees. The retaining wall would be necessary if they elected to do a higher degree of slope. Mrs. Kieffer asked whether they needed the retaining wall on the western border. Ms. Amy Fahmy, Sitework Solutions landscape architect, indicated that they would highly recommend the stone retaining wall.

Mr. Larry Manofsky, representing his daughter and son-in-law at 22 Cedarcliff Road, indicated no objection to the stone wall being placed on this property line.

Dr. Landau asked if the slope was a concern. Mr. Clarke said that based on his experience, 18 degrees for a slope was acceptable for emergency services. Ms. Fahmy indicated that 18 degrees would be doable.

For the record, a hardship was noted in relation to the existing topography and for the preservation of large hardwood trees.

#### DELIBERATION & DETERMINATION

Mrs. Kieffer reviewed the findings of fact, including the specific Conditional Use request and Variance requests. Mr. Tucker and Barbara Veach of 20 Cedarcliff Road are applying for a retaining wall in the driveway and the driveway in the front and side yard setback. The driveway will be 47 linear feet.

Mr. Robert Chandler made a motion to approve the Conditional Use Permit and Variance. He moved that a Conditional Use Permit be granted for an accessory building and that 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.

Mr. Chandler 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 1005.03 (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.

Further, Mr. Chandler moved that granting the Variance based upon the foregoing findings of fact, satisfied the applicable Sections of 1005.04 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 that 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.

Dr. Landau seconded the motion. The motion was unanimously approved.

HEARING (Evidentiary):

Dr. Blair and Mrs. Gabriel Holl, 1 Stuyvesant Road, are requesting a Conditional Use Permit and Variance approval to construct a stone wall and black metal and wood fence within the side yard setbacks, and will replace existing retaining wall and fencing. The project also includes the replacement of an existing deck, awning, and a Conditional Use request for a new, low stone retaining wall.

Ms. Amy Fahmy, representing Dr. Blair and Mrs. Gabriel Holl at 1 Stuyvesant Road, was called forward to review this proposal. Mrs. Groce shepherded the discussion. Mrs. Groce asked specifically about the fence sections that were included for approval. There was a black metal fence, stone wall, and wooden fence. Mrs. Groce asked Ms. Fahmy to verify where the proposed fences would be. Ms. Fahmy reviewed each proposal individually, and begin with the wood fencing to screen the HVAC and utility areas, and would then be used for some of the pool fencing. This is a replacement fence that would then tie back into the black metal fencing that would surround the remainder of the pool.

Ms. Fahmy's second request was to construct a low stone wall to the west of the pool that would be used to create a larger pool deck area. The black, four foot fence would be constructed on this wall in accordance with pool insurance requirements. Ms. Fahmy assured the Board that the stone wall and black fencing on this side would be screened by large evergreens, more than likely hollies.

The next item was the replacement of the white vinyl fence on the southern end of the property. The existing proposal indicated that the new black metal fence would be on the property line, but upon inspection at the property, the new proposal is to create the black metal fencing in the existing footprint of the current fence or a maximum of two feet farther away from the setback.

Ms. Fahmy asked whether tree removal came before this Board. Mr. Kanipe said he reviewed the trees on the site and they were fine to remove.

Mr. Pearlman verified once more that the change to the southern fence proposal would result in the shrubbery and screening being planted on the neighbor's side of the fence.

Ms. Fahmy then reviewed the proposal for a vegetable garden. Mr. Chandler asked whether they intended to have the vegetable garden, and Ms. Fahmy said that it would remain but they had removed the wooden fence per the Board's review and would only utilize plantings in this area.

Ms. Fahmy noted the location of the gates and fire pit within the fencing and the existing retaining wall, respectively. Mr. Kanipe asked for plans for the fireplace.

Mrs. Kieffer asked about the mud mats being utilized, and Ms. Fahmy indicated these were utilized to keep mud off Vanderbilt Road.

#### DELIBERATION & DETERMINATION

Mrs. Groce recited the facts. Dr. and Mrs. Holl, 1 Stuyvesant Road, are requesting a Conditional Use Permit for a stone wall to replace an existing wall in the same location, black metal fencing to replace the existing vinyl fence surrounding the pool. The requests include the following: a wood privacy fence around the mechanical equipment; a stone retaining wall 2'-3' in height in compliance with the setback, and finally a black metal fence which will replace the

white plastic fence which will remain in the same place. The final request is the stone fireplace which will be built into the existing wall. There were no changes to the findings of fact.

Dr. Landau made a motion to approve the Conditional Use Permit and Variance. He moved that a Conditional Use Permit be granted to Dr. Blair and Gabriel Holl of 1 Stuyvesant Road for the various structures, and that the facts as recited by Rhoda Groce 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.

Dr. Landau 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 1005.03 (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.

Further, Dr. Landau moved that granting the Variance based upon the foregoing findings of fact, satisfied the applicable Sections of 1005.04 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 that the spirit of the ordinance would be observed, public safety and welfare secured and substantial justice done. The applicant has been informed that he/she is to report to the Zoning Administrator within seven (7) days of completion of the project in order that the Zoning Administrator can determine that the project has been completed in accordance with plans submitted to the Town.

The motion was seconded by Mr. Pearlman and unanimously approved.

The meeting was adjourned at 5:03 p.m.

The next meeting of the Board of Adjustment was scheduled for Monday, August 15<sup>th</sup> 2016 at 4:00 p.m.

ATTEST:

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Greg Goosmann  
Chairman

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Jonathan B. Kanipe  
Town Administrator



MEMORANDUM  
AUGUST 15, 2016

To: Board of Adjustment  
From: Jonathan Kanipe, Town Administrator  
Re: Case 1 – 35 Hilltop Road  
Date: August 3, 2016

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**Case 1**

Property Owner: Steele and Debby Alphin  
Property Address: 35 Hilltop Road  
Zoning District: R-1  
Lot Size: 1.21 +/- acres  
Application Request: Variance Application for Encroachment into Side Yard Setback

The applicants request permission from the Board for a variance that would allow their driveway to encroach into the side yard setback on the eastern portion of the property. The applicants have included their rationale for the variance request within their application, but the primary reason is their desire to have a side loading garage and not a front loading garage.

The applicants have also indicated that the narrowness of the lot and existing topography of the lot make it more practical and aesthetically pleasing to have the garage face the side of the property, resulting in the request to encroach upon the side yard setback.

Please note that this lot is vacant and the design plans and elevations for the home are being presented to the Design Review Board in conjunction with the request for a side yard setback variance. The applicants purchased the lot in June 2016 from the Nippert family, who still have ownership of the vacant lot immediately to the east.

# Zoning Application

## Property Identification

**Name**

Steele and Debby Alphin

**Address**

35 Hilltop Road, Asheville, North Carolina 28803

**Phone**

(828) 505-7565

**Email**

hchammond1@gmail.com

**Zoning**

R-1

**Lot Size (Acres)**

1.21

**Email -Submission Verification**

hchammond@charter.net

## Scope of Project-Roof Coverage

**Does the project include increasing roof coverage?**

Yes

**What is the proposed roof coverage?**

4,320

**Is the proposed roof coverage greater than the permitted maximum roof coverage?**

No

## Scope of Project-Impervious Surface

**Does the project include increasing the impervious surface coverage?**

Yes

**What is the proposed impervious surface coverage?**

8,620

**Is the proposed impervious surface coverage greater than the permitted maximum impervious surface coverage?**

No

## Scope of Project-Setbacks

**Does any part of the project fall within the front yard?**

No

**Does any part of the project fall within the side/rear yard setback(s)?**

Yes

An application for a variance to encroach the side/rear yard setback(s) will be required in addition to this zoning application.

## Scope of Project-Accessory Structures

**Does the project include a detached structure or building?**

No

**Will there be more than the approved number of accessory structures/buildings?**

No

## **Project Description**

### **Brief Description of Project**

Single family home.

### **Estimated Cost of Project**

1,600,000

### **Estimated Completion Date**

12/1/2017

**Please attach any drawings, renderings, photographs or other supporting documentation.**

Alpin 35 Hilltop Rd Schematics.pdf

Alphin Preliminary Site Plan 8-1-16.pdf

# Variance Application

I hereby petition the Board of Adjustment for a variance(s) from the provisions of the Zoning Ordinance for the real property stated below.

**Name**

Steele and Debby Alphin

**Property Address**

35 hilltop Road

**Email**

hchammond@charter.net

**Phone**

(828) 505-7565

**Email-Submission Verification**

hchammond@charter.net

**Variance to Zoning Ordinance Section(s) (Select all that apply)**

1103 Required Yards & Other Spaces

N.C.G.S. 160A-388(D) requires that the Board of Adjustments shall vary the provisions of the Zoning Ordinance only upon a showing of ALL the following:

- 1) Unnecessary hardship would result from the strict application of the ordinance.
- 2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
- 3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
- 4) 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.

**State specific hardship that results in variance request to not comply with the Zoning Ordinance**

Client and Design team desire a side loaded garage. A portion of the drive is on the side yard setback. We would like to keep the garage on this side of the lot due to contours and neighbor's planting that already impede upon this lot.

**State what conditions are peculiar to the property that require a variance.**

Narrow lot that is amplified by the need for the house to address the road property thus making the lot even more narrow.

**Did the hardship result from actions taken by the applicant or property owner?**

no

**State how the requested variance is consistent with the spirit, purpose, and intent of the ordinance.**

It has been determined by the design team and by the wishes of the owner to not have a front loading garage. We feel the importance of minimizing the impact of front loading garage would benefit all parties. A small area of paving (asphalt, concrete, stone, or chat-gravel) will impose on the setback. We feel, with the proper landscape buffering, that we can minimize the impact.

In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with the Zoning Ordinance. Violations of the provisions of the variance granted including any conditions or safeguards which are part of the granting of the variance, shall be deemed a violation of the Zoning Ordinance. I hereby certify that the information set forth above is true and accurate to the best of my knowledge.

**Signature**

**Date**

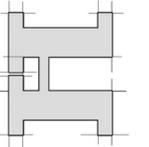
8/1/2016

A handwritten signature in black ink, written over a horizontal line. The signature is stylized and appears to consist of several connected loops and strokes, possibly representing the name 'M. H. Q.' or similar.



PROJECT SUMMARY

Total Lot Size: 1.21 Acres (52,707 SF)  
Proposed Impervious Area: 8,620 SF (16.35%)  
Allowable Impervious Area: 13,177 SF (25%)  
Proposed Roof Coverage: 4,770 SF  
Allowable Roof Coverage: 5,500 SF



Home Design by  
**HOUSTON  
HAMMOND**  
22 Weston Heights Dr.  
Asheville, NC 28806  
(704) 629-6066  
homedesignbyhha.com

Alphin Residence  
Lot 14, Hilltop Road  
Biltmore Forest, North Carolina

Preliminary Site Plan

Date: August 1, 2016



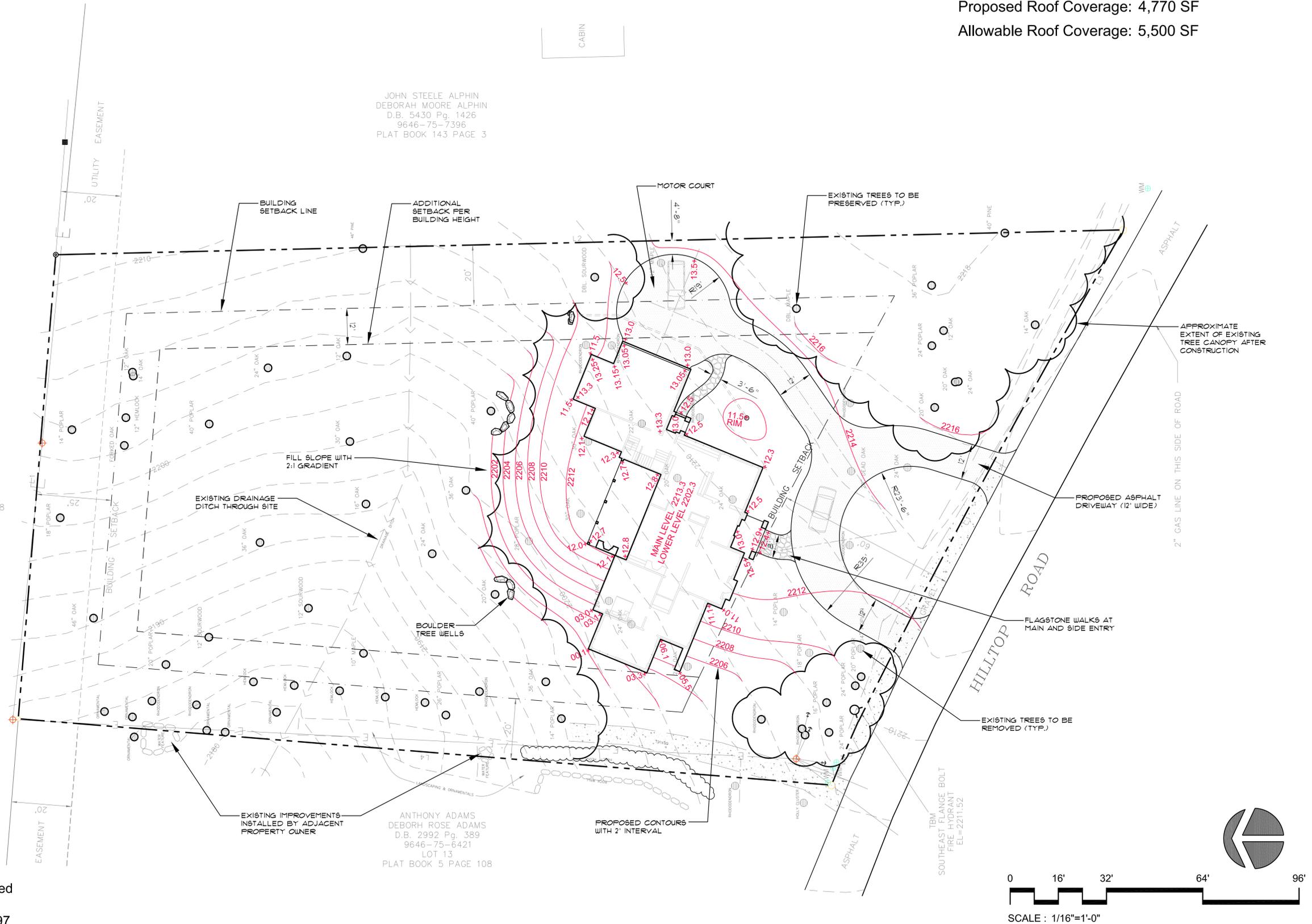
Note: Client is responsible for obtaining structural design from registered engineer for any retaining wall over 5' tall.

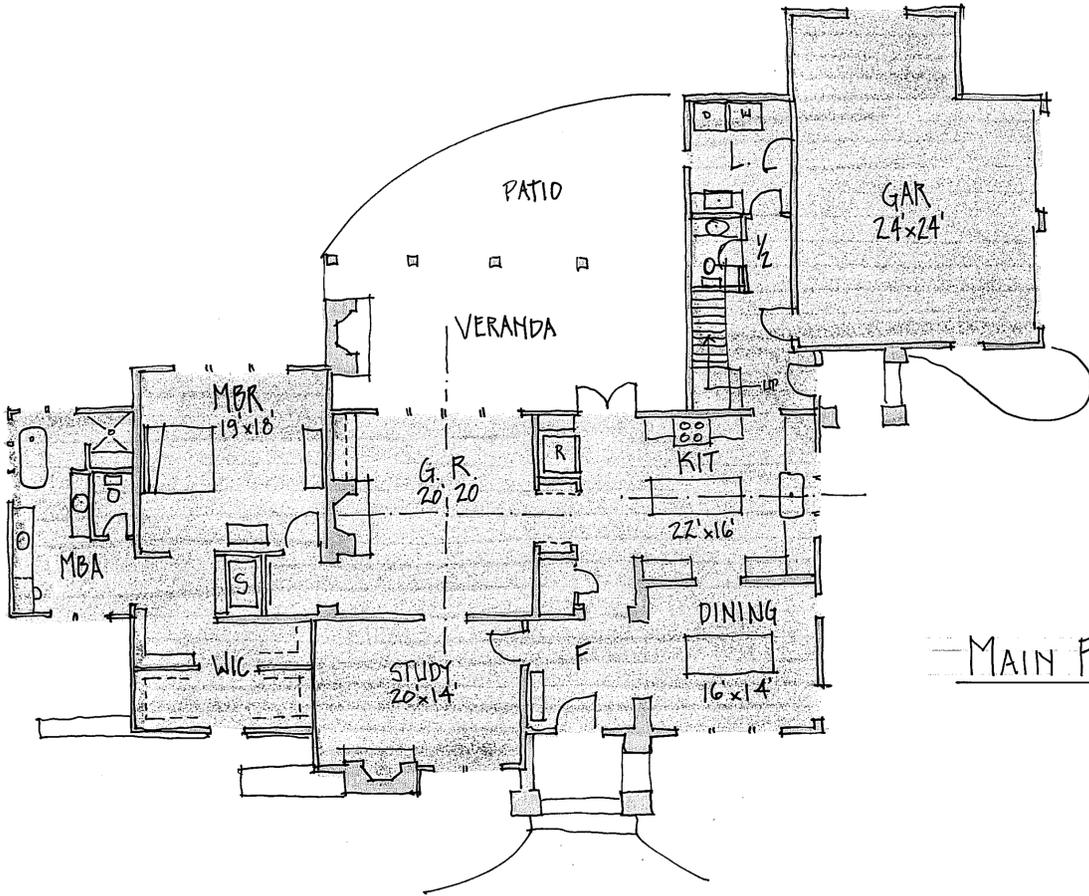
Note: Survey Info Provided  
By Ciper, Ingle, Anders &  
Associates (828) 258-0297

DAVID NEWMAN  
JANET M. NEWMAN  
D.B. 1956 Pg. 366  
9646-75-8739  
LOTS 4 & 5  
PLAT BOOK 5 PAGE 108

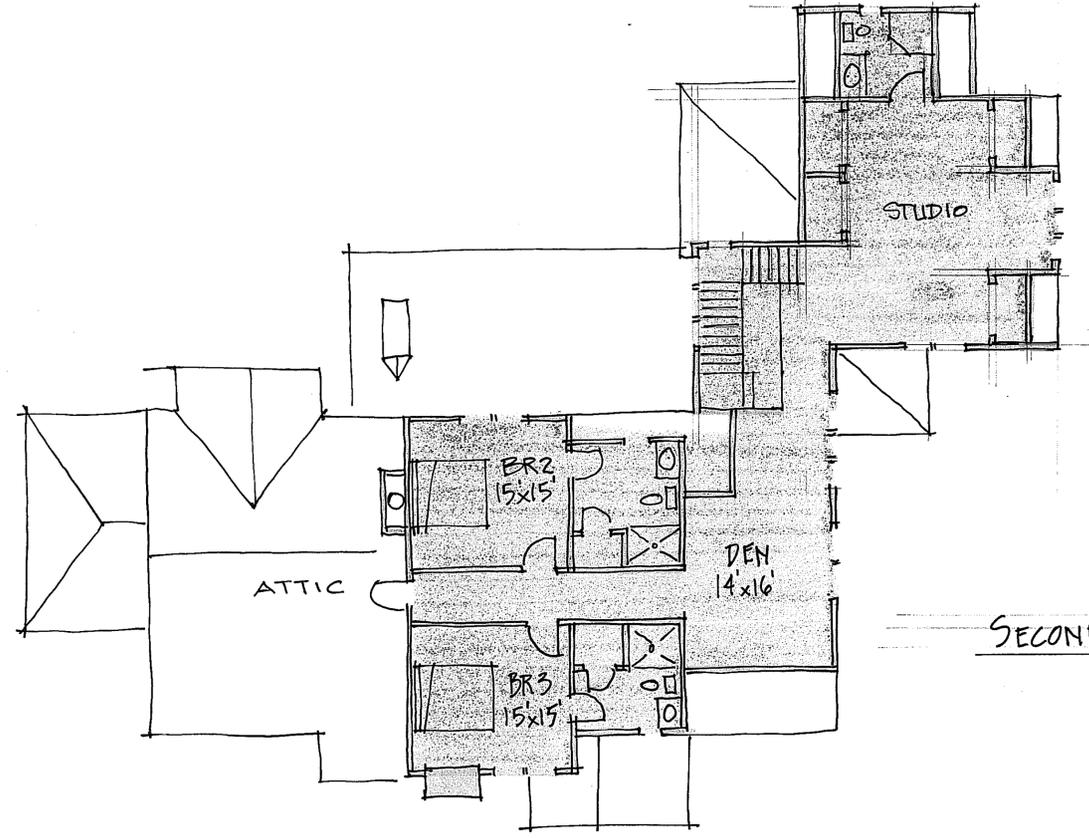
JOHN STEELE ALPHIN  
DEBORAH MOORE ALPHIN  
D.B. 5430 Pg. 1426  
9646-75-7396  
PLAT BOOK 143 PAGE 3

ANTHONY ADAMS  
DEBORH ROSE ADAMS  
D.B. 2992 Pg. 389  
9646-75-6421  
LOT 13  
PLAT BOOK 5 PAGE 108





MAIN FLOOR



SECOND FLOOR

A Residence For:  
**Steele and Debby Alphin**

35 Hilltop Road  
 Biltmore Forest TWP.

Buncombe County, North Carolina

Schematic Plans

SCALE: as noted  
 DATE: 7/31/2016  
 DRAWN BY: h.ch.

REVISIONS:  
 FIRST  
 SECOND  
 THIRD

Home Design by  
**HOUSTON  
 HAMMOND**  
 22 Weston Heights Dr.  
 Asheville, NC 28903  
 (704) 828-6065-7565  
 homedesignbyhh.com



EAST ELEVATION



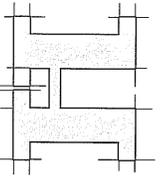
WEST ELEVATION



NORTH ELEVATION



SOUTH ELEVATION



Home Design by  
**HOUSTON  
HAMMOND**  
22 Weston Heights Dr.  
Asheville, NC 28803  
(704) 699-6005-7565  
homedesignbyhh.com

A Residence For:  
**Steele and Debby Alphin**  
35 Hilltop Road  
Biltmore Forest TWP.  
Buncombe County, North Carolina

Schematic Plans

SCALE: as noted  
DATE: 7/31/2016  
DRAWN BY: h.c.h.  
FIRST REVISIONS: SECOND THIRD



MEMORANDUM  
AUGUST 15, 2016

To: Board of Adjustment  
From: Jonathan Kanipe, Town Administrator  
Re: Case 2 – 422 Vanderbilt Road  
Date: August 3, 2016

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**Case 2**

Property Owner: James and Susan Selmensberger  
Property Address: 422 Vanderbilt Road  
Zoning District: R-1  
Lot Size: 2.22 +/- acres  
Application Request: Conditional Use Permit and Variance Application to Allow for Well head installation within Setback and Conditional Use Permit and Variance Application to Allow for Placement of Swing Set

Before outlining the Selmensberger's requests, there are some additional points for the Board to consider. The property sits on the corner of Vanderbilt and Southwood Roads. The property is addressed off Vanderbilt Road with the "front" of the home facing Southwood Road. In previous applications, the Board considered the Southwood Road area as the front yard, with the Vanderbilt Road side of the property being considered the side yard.

The Town's zoning ordinance specifies that "in the case of a lot with frontage on more than one street, the side of the lot with the most street frontage shall be considered the front yard". However, the recent amendments to the Town's zoning ordinance restated the Board's ability to address visibility concerns for corner lots, and specifically state that the Board of Adjustments "shall take into account and consider the visibility of both the front and side yards to the street and adjoining properties in any determination". A copy of that revised ordinance is included for your review during this deliberation. The highlighted sections of the amended ordinance provide some information or feedback into the rationale behind the change.

Mr. Selmensberger approached his variance request from the perspective of the front yard being on Southwood Road. The Board may want to consider this when making a determination as

to these requests, but again, please note that the recent amendment does ask the Board of Adjustments to consider the visibility for both front and side yards of corner properties.

The applicants request permission from the Board for two conditional use permits and variances that are best reviewed individually.

#### Irrigation Well Head

- 1) Conditional use permit to install an irrigation well head on the northwest portion of the property. The location of the well head in the rear setback is a result of requirements from the Buncombe County Health Department that wells be drilled a minimum of twenty-five (25) feet from a structure.
- 2) Mr. Selmensberger indicated that the existing structures (home and garage) are located close to the side and rear setbacks, which dictates the exact location of the well based on the 25 feet requirement. From the survey, it appears that the well head would be twenty feet from the rear property line, which is out of compliance by five feet.

#### Children's Play Set

- 1) The Selmensbergers moved from 21 White Oak Road and brought the children's play set with them at that time. Mr. Selmensberger noted that they located it on the southeastern corner of the property until finding an acceptable location with the Board. The conditional use permit is to allow the continued installation and use of the children's play structure.
- 2) Mr. Selmensberger notes that the current placement of the structure is within the front yard (as viewed from Southwood Road) and as such is not in compliance. He has expressed a willingness to work with the Board to find an acceptable location, but is concerned about finding the most aesthetically pleasing location due to the placement of the main residence on the lot.

Also of note is the existence of a play house on the eastern side of the property. This play house was on site previously though it is now much more visible due to the overgrowth that the Selmensbergers removed, in addition to the cleanup that occurred on the structure. The cleanup of this structure, and the area surrounding it, has engendered many questions from people as to whether it was a new structure, but it was previously existing on the site.

**Proposed Changes to Code of Ordinances and Zoning Ordinance**

**§150.03 ROOF COVERAGE; APPROVED MATERIALS.** [changed to comply with Senate Bill 25] [ Code of Ordinances 5-2]

The following list of materials is suggested for roof coverage.

- (A) Brick or concrete surface
- (B) Clay or Portland cement tile
- (C) Tin or slate
- (D) Asbestos shingles one eighth inch thick or thicker
- (E) Pitch or felt, built-up type, four or five plies, gravel, or slag surface
- (F) Asbestos-asphalt, built up type, four or five plies, smoot, or grit surface

**§150.06 WOOD SHINGLE ROOFS.** [ Code of Ordinances 5-6]

If a wood shingle roof is damaged by a fire more than 20%, the entire roof shall be replaced. If a wood shingle roof is to be repaired more than 10% in any one year, the entire roof shall be replaced. [changed to comply with S. 25]

**PROPOSED CHANGES TO ZONING ORDINANCE**

**§153.004 INTERPRETATIONS AND DEFINITIONS.**

***ACCESSORY STRUCTURE.*** A structure incidental and subordinate to the principal use or building on the lot and located on the same lot with such principal use or building. Accessory Structures include, but are not limited to, fences, walls, curbs, pools, play sets, statues, water features, playhouses, decorative walls, sculptures, solar collectors, residential street lamps, rock and stone moved from its original location to any other location on the property, and the like. [new definition replacing ACCESSORY USE] [ 401.1 in Zoning Ordinance]

***BUILDING.*** Any structure having a roof supported by columns or by walls, and intended for shelter, housing, or enclosure of persons, animals or property. Two structures shall be deemed a single building only if connected by heated and enclosed living space. [revised second sentence] [401.07 in Zoning Ordinance]

***BUILDING, ACCESSORY.*** A detached building subordinate to the main building on a lot and used for purposes customarily incidental to the main or principal building and located on

the same lot. [changed period after BUILDING to comma and deleted second sentence regarding garage apartments or rental units used by family member] [ 401.08 in Zoning Ordinance]

**ROOF COVERAGE.** For the purposes of building construction and the calculation of maximum roof coverage pursuant to §§ 153.029(B)(1)(b) and 153.043 (and any other section of this chapter dealing with roof coverage), **ROOF COVERAGE** shall be the area contained under the roof of the primary building or any accessory structure/building and shall also include any impervious deck surface or any other above-grade impervious surface extending from or being attached to any primary building or accessory structure/building. Both heated and unheated enclosed spaces or any open space within, under or covered by the roof of the primary building or accessory structure/building or by any above-grade impervious surface (such as a deck, and the like), extending from the primary building or accessory structure/building shall be included in the calculation of **ROOF COVERAGE**. [changed "healed" to "heated," and made "space" plural] [401.52 in Zoning Ordinance]

**STRUCTURE.** Anything constructed or erected, including but not limited to, buildings, which requires location on the land or attachment to something having permanent location on the land. [everything after subparagraph (a) was removed from this section and inserted in a new section, 153.029(c), covering fences] [9401.56 in Zoning Ordinance]

**VARIANCE.** Variance shall be as defined in G.S. §160A-388(d) together with any amendments thereto. [changed definition to be in compliance with state statute] [401.59 in Zoning Ordinance]

**YARD, FRONT.** An open, unoccupied space on the same lot with a principal building, extending the full width of the lot, and situated between the street or property line and the front line of the building, projected to the side lot lines of the lot. Driveways, to the extent possible, shall enter the property through the front yard. In the case of a lot with frontage on more than one street, the side of the lot with the most street frontage shall be considered the **FRONT YARD**, however, in the consideration and determination of applications for conditional use or variance on such a lot, the Board of Adjustment shall take into account and consider the visibility of both the FRONT and SIDE YARDS to the street and adjoining properties in any determination. [expanded definition to address visibility of lots fronting on two streets] [401.62 in Zoning Ordinance]

## **§153.005 ESTABLISHMENT OF ZONING DISTRICTS AND MAP.**

(C) *Establishment of zoning map.* A zoning map, entitled the "Official Zoning Map of the Town of Biltmore Forest," depicts all approved use districts and their respective boundaries. Such map is hereby made a part of this chapter and shall be maintained by the Town Zoning Administrator and updated to reflect changes and amendments to this Zoning Ordinance. This map shall be available for inspection by interested persons during normal business hours of the Town Zoning Administrator. It shall be the duty of the Town Zoning Administrator to maintain the said map and post any changes thereto as they may be made. [made some changes to language] [502, 503 and 504 in Zoning Ordinance ]

(E) *Statement of district intents.*(1) *R-1 Residential District.*

(b) Nonresidential uses, including home occupations, have been limited in this District as a means of maintaining the character of these neighborhoods. Likewise, dimensional requirements pertaining to lot size, building setbacks, yard requirements, and height limitations have been established to promote the general welfare and preservation of the community. [inserted comma after "home occupations"] [503 in Zoning Ordinance]

(2) *R-2 Residential District.*

(b) As in the R-1, nonresidential uses, including home occupations, have been limited in this District as a means of assuring a pleasant residential atmosphere. [inserted comma after, "home occupations"]

(3) *R-3 Residential District.*

(b) This District is primarily a low-density residential district; however, to accommodate contemporary design and building practices, it includes residential planned unit developments as a conditional use at a maximum density of eight dwelling units per acre. Nonresidential uses, including home occupations, will also be limited in the R-3 District in order to maintain the same quiet and pleasant living environment as found in the R-1 and R-2 Districts. [eliminated first two sentences about there being no public water and sewer in R-3]

(7) *Landscaping plans. [\*Move this paragraph to §153.034 (D) – shown below]*

**§153.006 PERMITTED USE TABLE. [ Article VI in Zoning Ordinance]**

[moved footnotes from the Permitted Use Table to a new section immediately following Permitted Use Table]

(A) *TABLE*(B) *General Provisions*

(1) Only two clothing or jewelry sales may be held per year at each dwelling, not to exceed five consecutive days for each sale. Property owners are required to contact the Zoning Administrator prior to holding the sale so that the date of the sale may be noted.

(2) Only one estate auction sale may be held during a resident's ownership of the property. Property owners are required to contact the Zoning Administrator prior to holding the sale so that the date of the sale may be noted.

(3) Only one garage/yard sale may be held per year at each dwelling. Property owners are required to contact the Zoning Administrator prior to holding the sale so that the date of the sale may be noted.

(4) Only four fundraising events may be held per year at each dwelling. No such event shall last longer than five hours in a single day and any such event must end by 11:00 P.M. There shall be no sales of goods or services at any such event. Parking for such an event must not impede the normal flow of traffic and must not be upon any other property without permission from the property owners.

(5) No home business activity shall employ any person who does not live in the home. No person shall come to the home for a business transaction of any nature as part of the home business activity, including, but not limited to, retail or commercial sales or fee for service transactions. No shipping, via Fed Ex, UPS, or any other provider, shall be permitted from the dwelling.

(6) Where there is proposed more than one principal building per lot or where there is proposed any building with a gross floor area of 50,000 square feet or more, a planned unit development must be sought.

### **§153.007 DIMENSIONAL REQUIREMENTS. [ Article VII in Zoning Ordinance]**

[Put footnotes from this section in a new section, GENERAL PROVISIONS, after table. \*Moved footnote 2 to §153.009 – shown below]

(A) *TABLE*

(B) *General Provisions*

(1) The minimum lot area for lots not served by public water and sewer shall be subject to approval by the County Health Department to ensure the proper operation of septic tanks and wells. In no case, shall the minimum Lot Size be less than the dimensional requirements in 153.007.

(2) The minimum lot width at the street line shall be 125 feet in the R-1 District, and 80 feet in the R-2, R-3 and R-4 Districts.

(3) On all corner lots, a 30-foot side yard setback is required.

(4) Accessory structures, including driveways, shall meet all setback requirements. Notwithstanding the foregoing, setback requirements for driveway entrance columns or driveway entrance walls may be waived or modified by the Board of Adjustment in accordance with the granting of a Conditional Use permit without the need for a Variance.

(5) Height requirements may be varied upon approval from the Board of Adjustment.

**§153.008 CONDITIONAL USES. [ 802 in Zoning Ordinance]**

(C) *Conditional use standards.*

(6) *All commercial services, professional office uses, consumer services, and retail business.*

(c) Front setbacks along Hendersonville Road shall be considered on a case-by-case basis by the Board of Adjustment with input from the Zoning Administrator. The Board of Adjustment shall determine the setback upon consideration of the most suitable location for parking. Required parking shall be provided either at the side, rear, or front of the proposed development, based upon the location of adjacent and/or nearby residential dwellings, topography, existing or proposed screening, or other factors which may include noise or glare. When parking is designated to be at the rear of the proposed building, the front setback shall be determined on a case-by-case basis by the Board of Adjustment; when parking is designated to be at the front of the proposed building, then the front setback shall be 50 feet. [deleted unnecessary "on" from 4th line]

**§153.027 LOT FRONTAGE. [1102 in Zoning Ordinance]**

All lots shall front on a public street. It is suggested but not required that garage doors not face or be visible from the public street, that garage doors not be more than ten feet wide, and if there are multiple garage doors, that there be at least 18 inches of separation between them. [changed to comply with S. 25]

**§153.029 ACCESSORY STRUCTURES AND BUILDINGS. [1104 in Zoning Ordinance]**

(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. [added language about no ACCESSORY STRUCTURES in side or rear yard setbacks.]

(B) (1)

- (a)
- (b)
- (c)
- (d)
- (e)
- (f)

(g)

(h) Solar collectors shall be regulated in accordance with North Carolina General Statutes 160A-201. [new section to comply with NC statute]

(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.

(C) The town is a unique community concerned with historic continuity. The Town, originally part of the Vanderbilt Estate, was established 100 years ago. Since its inception, Biltmore Forest has been a forested residential community with substantial green open space. To that end, persons constructing new residences and renovating existing residences are encouraged to limit the construction of fences and walls. Fences, including the replacement of an existing fence, are allowed only as a conditional use. Fences must comply with the following conditions: [added introductory language and moved current language from Definitions section – added sections (5) and (6)]

(1) Wooden fences should be of natural color or painted in a manner compatible with the color of the primary residence. Non-wooden fencing material shall be black, dark green, or brown to blend with surrounding trees or vegetation.

(2) No new chain link fences shall be allowed. Existing chain link fences may be replaced with fencing of other material subject to the approval of the Board of Adjustment.

(3) The Board of Adjustment may require buffering of any fencing to conceal the fence from neighboring properties and the street as a condition of allowing the fencing.

(4) No fencing shall be allowed in the front yard of a Lot, or within the side or rear yard setbacks.

(5) Confining dogs shall not be considered sufficient purpose for building a fence if other options, such as underground electric fences are available.

(6) The Design Review Board shall develop standards and specifications for acceptable fencing material.

**§153.034 LAND DISTURBANCE AND SEDIMENTATION CONTROL. [1109 in Zoning Ordinance]**

(A) Any land-disturbing activity, such as grading projects or removal of natural vegetation, that involves the disturbance of 20% or more of the land area of any lot shall submit a landscaping and grading plan for such activity to the Board of Adjustment for review and approval. Prior to commencing such activity in a public service district, any land-disturbing activity such as grading projects or removal of natural vegetation other than routine maintenance shall be subject to approval by the Town Board of Adjustment regardless of the area to be disturbed.

(B) The intent of this requirement ...

(C) Where applicable ...

(D) A specific landscaping plan prepared by an appropriate professional shall be submitted to the Board of Adjustment which shall details all plantings or reforestation to take place as part of the land-disturbing activity. [moved from 153.005 (E)(7).]

**§153.044 MATERIAL AND COLOR REQUIREMENTS FOR RESIDENTIAL DWELLING UNITS. [1119 in Zoning Ordinance]**

(A) The town is a unique community concerned with historic continuity. The Town and its citizens are interested in the exterior appearance of residential structures, including the materials and color used in constructing and reconstructing such structures. To that end, those persons constructing new residences or renovating or expanding existing residences are encouraged to consider the provisions of this section regarding building materials. [changed to comply with S. 25]

(1) *Materials.*

1. *Siding.*

a. *Suggested exterior siding materials.*

b. *The following exterior siding materials are discouraged.*

2. *Roofing visible from adjacent property.*

a. *Suggested roofing materials.*

b. *The following roofing materials are discouraged.*

(2) *Color.* The intent of these provisions is to promote colors which blend with the existing structures and preserve the existing visual environment. It is further the intent of these provisions to prevent exterior paints or stains which are distracting and present inappropriate color contrast to the surrounding natural and built environment.

(a) *Suggested exterior colors.*

(b) The use of day-glow or fluorescent colors is discouraged.

**§153.045 SITE DESIGN AND BUILDING FORM AND MASS FOR RESIDENTIAL DWELLING UNITS. [1120 in Zoning Ordinance]**

(B)

(3) *Building forms and mass.*

(b) *Roof form.*

1. *The following roof forms are encouraged.*

2. *The following roof forms are discouraged as inconsistent with existing structures in the Town.*

**§153.061 GENERAL INFORMATION. [1301 in Zoning Ordinance]**

(A) *Applicability.*

(3) New parking spaces or lots are not required to comply with the provisions of this section.

**§153.064 PARKING LOT LANDSCAPING REQUIREMENTS. [1304 in Zoning Ordinance]**

(A) There shall be a continuously-maintained growing strip planted with grass or similar low-growing vegetation, measured from the back of the curb and extending ten feet perpendicular to the road. The purpose of this growing strip is to provide a clear line of sight for motorists, pedestrians, and cyclists entering and leaving commercial properties. [changed "glass" to "grass."]

**§153.065 SCREENING OF DUMPSTERS, LOADING DOCKS, OUTDOOR STORAGE AREAS, AND UTILITY STRUCTURES. [changed "Docs" to "Docks"] [ 1305 in Zoning Ordinance]**

# Zoning Application

## Property Identification

**Name**

James and Susan Selmensberger

**Address**

422 Vanderbilt Road, Asheville, North Carolina 28803

**Phone**

(828) 713-0900

**Email**

jim@palladiumbuilders.com

**Zoning**

R-1

**Lot Size (Acres)**

2.22

**Email -Submission Verification**

jim@palladiumbuilders.com

## Scope of Project-Roof Coverage

**Does the project include increasing roof coverage?**

No

**Is the proposed roof coverage greater than the permitted maximum roof coverage?**

No

## Scope of Project-Impervious Surface

**Does the project include increasing the impervious surface coverage?**

No

## Scope of Project-Setbacks

**Does any part of the project fall within the front yard?**

No

**Does any part of the project fall within the side/rear yard setback(s)?**

Yes

An application for a variance to encroach the side/rear yard setback(s) will be required in addition to this zoning application.

## Scope of Project-Accessory Structures

**Does the project include a detached structure or building?**

No

**Will there be more than the approved number of**

**accessory structures/buildings?**

No

## **Project Description**

### **Brief Description of Project**

Drill a well for the purpose of irrigation. The well is being proposed in the north west corner of the property as shown on the attached survey. The proximity of the well is being requested as shown for the following reasons:

- 1) Close proximity to incoming power necessary to energize the well pump.
- 2) Close proximity to main water feed and back flow to irrigation system.
- 3) Drill rig will be able to access the site with minimal damage to existing yard.
- 4) Crane or drill rig can access well site in the future for maintenance with minimal to no damage to existing yard.
- 5) The location is the most obscure site that meets the requirements of 1-4 above.

### **Estimated Cost of Project**

5,000

### **Estimated Completion Date**

8/19/2016

**Please attach any drawings, renderings, photographs or other supporting documentation.**

422 Vanderbilt Survey.pdf

# Variance Application

I hereby petition the Board of Adjustment for a variance(s) from the provisions of the Zoning Ordinance for the real property stated below.

**Name**

James and Susan Selmensberger

**Property Address**

422 Vanderbilt Road

**Email**

jim@palladiumbuilders.com

**Phone**

(828) 713-0900

**Email-Submission Verification****Variance to Zoning Ordinance Section(s) (Select all that apply)**

1103 Required Yards & Other Spaces

N.C.G.S. 160A-388(D) requires that the Board of Adjustments shall vary the provisions of the Zoning Ordinance only upon a showing of ALL the following:

- 1) Unnecessary hardship would result from the strict application of the ordinance.
- 2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
- 3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
- 4) 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.

**State specific hardship that results in variance request to not comply with the Zoning Ordinance**

Drill a well for the purpose of irrigation within the left side setback. The well is being proposed in the Northwest corner of the property as shown on the survey. The proximity of the well is being requested for the following reasons:

- 1) Close to incoming power necessary to energize the well pump.
- 2) Close to main water feed and back flow to existing irrigation system.
- 3) Drill rig can access site with minimal damage to existing yard.
- 4) Crane or drill rig will be able to access well for future maintenance with minimal disturbance to existing yard.
- 5) The well head will be least visible to the public and neighbors at the requested site.
- 6) The existing house and garage are located close to the side and rear setbacks. Buncombe County's Health Department mandates that all wells must be drilled a minimum of 25' from structures. If we wish to satisfy 1-5 above, it necessitates drilling the well in the 30' side setback.

**State what conditions are peculiar to the property that require a variance.**

The property is 2.22 acres +/- but the home and garage are built close to the rear and left side setbacks. Buncombe County's Health Department mandates that wells are drilled at least 25' from structures. If we drill a well in an area that can be most obscured from public and neighbors' view, is in reasonable proximity

to existing power, is in reasonable proximity to the existing irrigation main and backflow, and is in an area that a well truck and future crane can access without considerable damage to property, we are limited to a few areas at the left and back of the property.

**Did the hardship result from actions taken by the applicant or property owner?**

No

**State how the requested variance is consistent with the spirit, purpose, and intent of the ordinance.**

The proposed well site is consistent with the spirit of the ordinance as we are, in good faith, defining a location for the well that will cause no disturbance to the community of Biltmore Forest. The well head will be hidden from view by the existing topography and foliage as well as any additional plantings necessary to obscure it. The location being requested has also been reviewed by numerous professionals and was determined to be the most practical area for the reasons described above.

In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with the Zoning Ordinance. Violations of the provisions of the variance granted including any conditions or safeguards which are part of the granting of the variance, shall be deemed a violation of the Zoning Ordinance. I hereby certify that the information set forth above is true and accurate to the best of my knowledge.

**Signature**

**Date**

8/1/2016



---

**REVIEW OFFICER**

STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

I, \_\_\_\_\_ REVIEW OFFICER  
OF BUNCOMBE COUNTY, CERTIFY THAT THE MAP OR PLAT  
TO WHICH THIS CERTIFICATION IS AFFIXED MEETS ALL  
STATUTORY REQUIREMENTS FOR RECORDING.

REVIEW OFFICER \_\_\_\_\_

DATE \_\_\_\_\_

**REGISTER OF DEEDS**

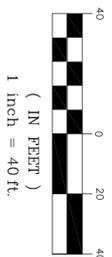
STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

PLAT BOOK \_\_\_\_\_ PAGE \_\_\_\_\_  
FILED FOR REGISTRATION ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_  
2016 AT \_\_\_\_\_

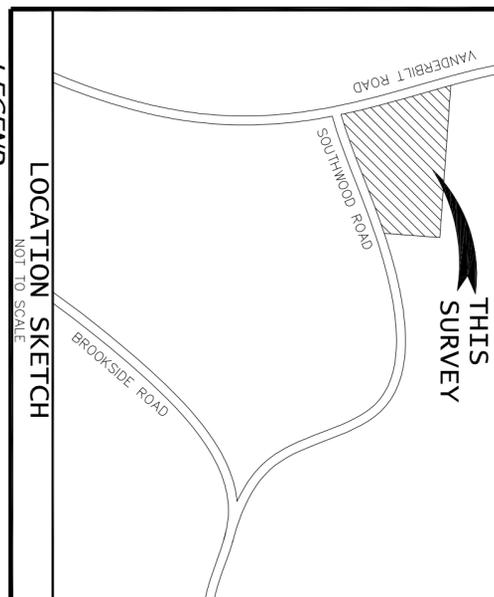
REGISTER OF DEEDS, BUNCOMBE COUNTY

BY: \_\_\_\_\_ DEPUTY/ASSISTANT

**GRAPHIC SCALE**



PLAT BOOK 2, PAGE 34



**LEGEND**

- △ CENTRAL ANGLE
- L ARC LENGTH
- R RADIUS
- R/W RIGHT OF WAY
- FOUND IRON PIN
- ⊙ FOUND STONE
- ⊙ LIGHT POLE
- ⊙ WOOD POWER POLE
- ⊙ PROPERTY LINE
- ⊙ FIRE HYDRANT
- ⊙ BACKFLOW PREVENTER
- ⊙ SQUARE FEET
- BOUNDARY LINE NOT SURVEYED
- ⊕ RIGHT OF WAY LINE POINT NOT SET
- SET 5/8" IRON ROD WITH L-4379 CAP
- LINE NOT TO SCALE
- CHD CHORD
- BRG BEARING
- ① DRAINAGE MANHOLE
- ② SANITARY MANHOLE
- WM WATER METER
- WV WATER VALVE
- WB WATER BASIN
- ◇ CLEAN OUT
- E ELECTRIC RISER
- EM ELECTRIC METER
- GM GAS METER
- N/F NOW OR FORMERLY
- OH OVERHEAD WIRE

**NOTES**

- 1.) THIS SURVEY IS OF AN EXISTING PARCEL OR PARCELS OF LAND
- 2.) THE BEARINGS SHOWN HEREON ARE BASED ON PLAT BOOK 2, PAGE 34 AND ARE REFERENCED TO THE EASTERLY LINE OF LOTS 29-28 OF SAID PLAT BOOK HAVING A BEARING OF S89°48'00"W.
- 3.) THE LANDS SHOWN HEREON WERE NOT ABSTRACTED FOR EASEMENTS, RIGHT OF WAYS OR OWNERSHIPS.
- 4.) THE RATIO OF PRECISION OF THE UNBALANCED TRAVERSE MEETS OR EXCEEDS 1 : 10,000.
- 5.) THE SUBJECT PROPERTY IS NOT LOCATED WITHIN A SPECIAL FLOOD HAZARD AREA AS DETERMINED BY FEMA.
- 6.) THE FEATURE SYMBOL LOCATIONS ARE TO THE CENTER OF THE SYMBOL AND MAY BE ENLARGED FOR CLARITY.
- 7.) UNDERGROUND FOUNDATIONS AND/OR UNDERGROUND UTILITIES HAVE NOT BEEN LOCATED.
- 8.) BEARINGS AND DISTANCES SHOWN IN PARENTHESES REPRESENT DEED AND OR PLAT VALUES.
- 9.) ACREAGE COMPUTED BY THE COORDINATE METHOD.
- 10.) THERE ARE NO NORTH CAROLINA GEODETIC CONTROL POINTS WITHIN 2000 FEET OF THIS SITE.

**REFERENCES**

DEED BOOK 5418, PAGE 583  
PLAT BOOK 17, PAGE 125

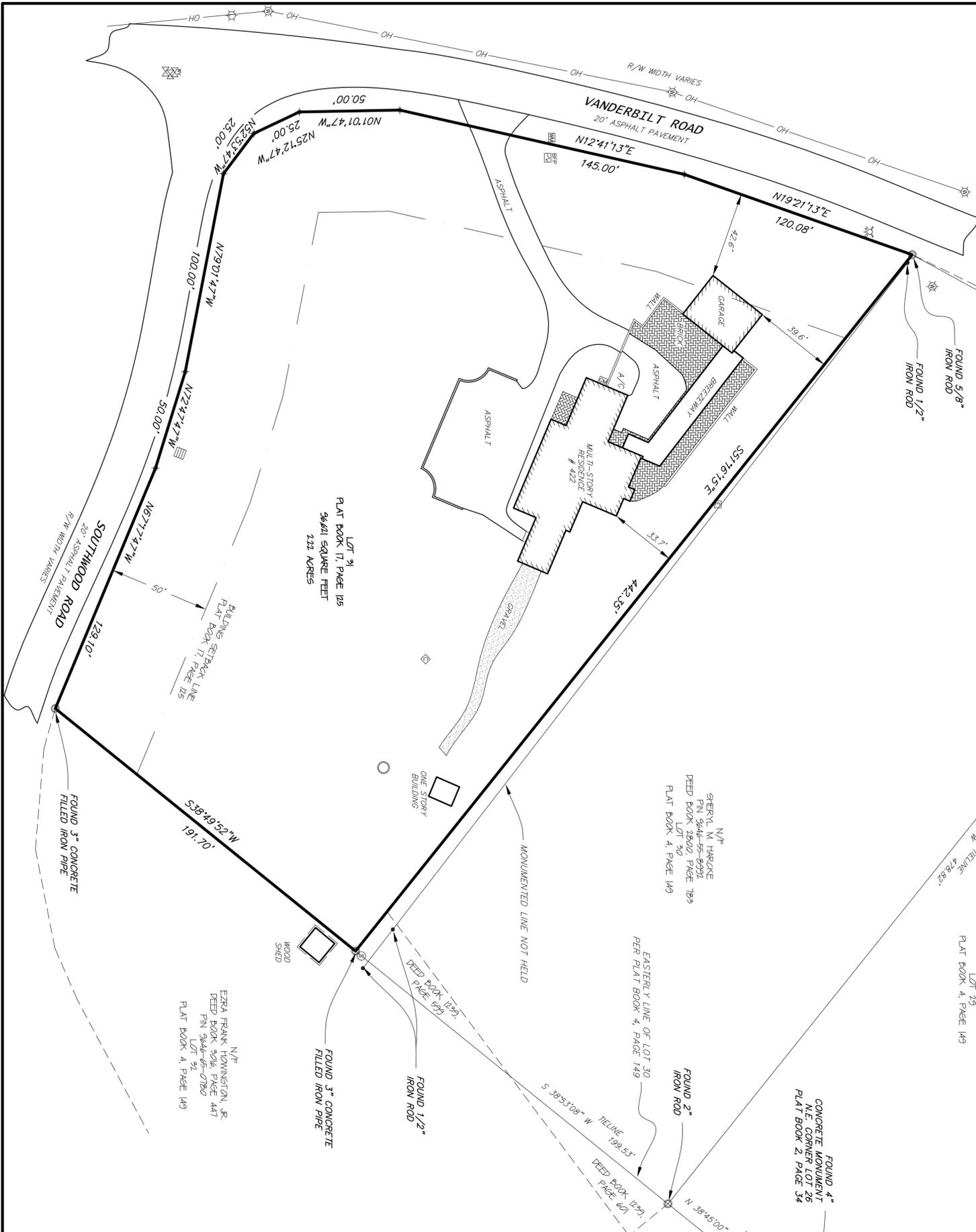
**ZONING**

R-1  
SETBACKS:  
FRONT: 60'  
SIDE: 20'  
CORNER SIDE: 30'  
REAR: 25'

**CERTIFICATE**

I, KEITH R. SANDERS, CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY DIRECT SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION ( DEED DESCRIPTION RECORDED IN BOOK 5418, PAGE 583, BUNCOMBE COUNTY REGISTER); THAT THE BOUNDARIES NOT SURVEYED ARE CLEARLY INDICATED AS DRAWN FROM INFORMATION FOUND IN THE BUNCOMBE COUNTY REGISTER (SEE REFERENCES); THAT THE RATIO OF PRECISION AS CALCULATED IS 1 : 10,000+; THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH G.S. 47-30 AS AMENDED.  
WITNESS MY ORIGINAL SIGNATURE, REGISTRATION NUMBER AND SEAL THIS 20TH DAY OF JULY, A.D. 2016.

KEITH R. SANDERS  
PROFESSIONAL LAND SURVEYOR # L-4379  
STATE OF NORTH CAROLINA

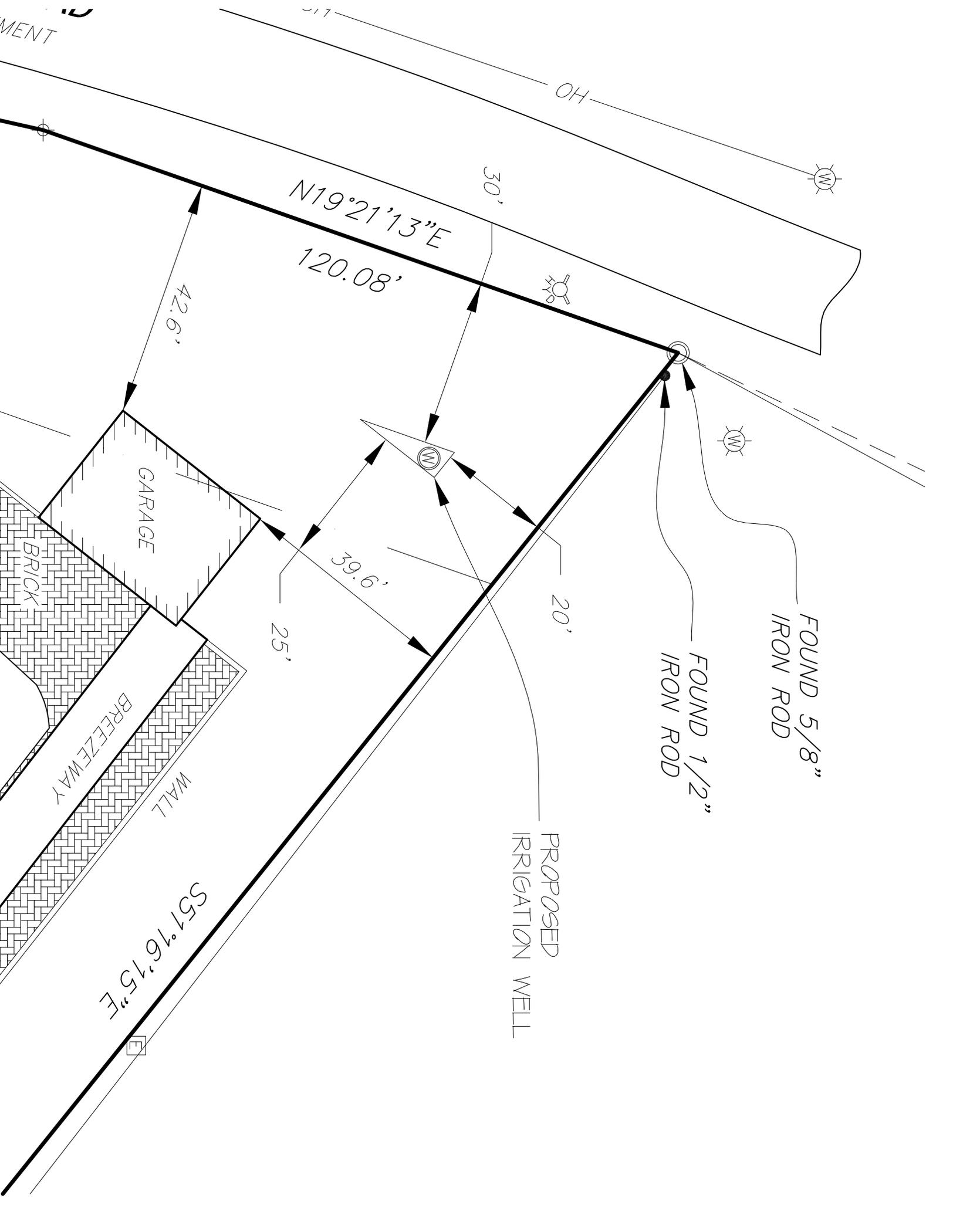


DATE: 07/18/16	
DRAWN: KRS	
CHECKED: KRS	
F.B. #: TDS	
SCALE: 1" = 40'	
16-0071.DWG	

**BOUNDARY SURVEY FOR:**  
**JIM AND SUSAN SELSMENBERGER**  
 PIN # 9646-55-7784  
 DEED BOOK 5418, PAGE 583  
 TOWN OF BILTMORE FOREST,  
 BUNCOMBE COUNTY, NORTH CAROLINA

**SANDERS SURVEYING & MAPPING SERVICES, INC.**  
 (828) 669-2777  
 C-2384  
 510 AVENA ROAD, BLACK MOUNTAIN, NORTH CAROLINA, 28711

NO.	REVISION	DATE	BY



MENT

$N19^{\circ}21'13''E$   
 $120.08'$

GARAGE

BRICK

BREZZEWAY WALL

$S57^{\circ}16'15''E$

PROPOSED  
IRRIGATION WELL

FOUND 1/2"  
IRON ROD

FOUND 5/8"  
IRON ROD

$42.6'$

$30'$

$39.6'$

$25'$

$20'$

OH

(W)

(W)

(W)

(E)

# Zoning Application

## Property Identification

**Name**

James and Susan Selmensberger

**Address**

422 Vanderbilt Road, Asheville, North Carolina 28803

**Phone**

(828) 713-0900

**Email**

jim@palladiumbuilders.com

**Zoning**

R-1

**Lot Size (Acres)**

2.22

**Email -Submission Verification**

## Scope of Project-Roof Coverage

**Does the project include increasing roof coverage?**

No

**Is the proposed roof coverage greater than the permitted maximum roof coverage?**

No

## Scope of Project-Impervious Surface

**Does the project include increasing the impervious surface coverage?**

No

## Scope of Project-Setbacks

**Does any part of the project fall within the front yard?**

No

**Does any part of the project fall within the side/rear yard setback(s)?**

Yes

An application for a variance to encroach the side/rear yard setback(s) will be required in addition to this zoning application.

## Scope of Project-Accessory Structures

**Does the project include a detached structure or building?**

Yes

An application for a conditional use permit will be required in addition to this zoning application.

**Will there be more than the approved number of**

An application for a variance to exceed the permitted

**accessory structures/buildings?**

Yes

number of accessory structures and a conditional use permit for an accessory structure will be required in addition to this zoning application.

## **Project Description**

**Brief Description of Project**

Recently relocated our residence to 422 Vanderbilt and moved the children's swing set from 21 White Oak Road to 422 Vanderbilt Road. The set was temporarily placed in the South East corner of the lot and was reconditioned to closely blend in with the natural surroundings until we can determine with the board where it can be located.

**Estimated Cost of Project**

1,000

**Estimated Completion Date**

8/1/2016

**Please attach any drawings, renderings, photographs or other supporting documentation.**

# Conditional Use Permit Application

I hereby petition the Board of Adjustment to issue a Conditional Use Permit for:

**Name**

James and Susan Selmensberger

**Property Address**

422 Vanderbilt Road

**Phone**

(828) 713-0900

**Email**

jim@palladiumbuilders.com

**Type of Conditional Use**

802.07 Accessory Buildings

**Email-Submission Verification**

jim@palladiumbuilders.com

**Description of Project**

Locate a children's swing set at 422 Vanderbilt Road.

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

The swing set will be located out of view of the public and neighbors of 422 Vanderbilt.

I certify that the information presented by the undersigned in this application is accurate to the best of my knowledge, information and belief.

**Signature**



**Date**

8/1/2016

---

# Variance Application

I hereby petition the Board of Adjustment for a variance(s) from the provisions of the Zoning Ordinance for the real property stated below.

**Name**

James and Susan Selmensberger

**Property Address**

422 Vanderbilt Road

**Email**

jim@palladiumbuilders.com

**Phone**

(828) 713-0900

**Email-Submission Verification**

**Variance to Zoning Ordinance Section(s) (Select all that apply)**

1104 Accessory Structures & Accessory Buildings

N.C.G.S. 160A-388(D) requires that the Board of Adjustments shall vary the provisions of the Zoning Ordinance only upon a showing of ALL the following:

- 1) Unnecessary hardship would result from the strict application of the ordinance.
- 2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
- 3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
- 4) 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.

**State specific hardship that results in variance request to not comply with the Zoning Ordinance**

422 Vanderbilt is a unique and beautiful property. The lot size is 2.22 acres +/- but the home and garage are located close to the North and West setbacks. As a result, there is no room to place a swing set for the children behind the home. We have temporarily placed the set in the Southeast corner of the lot as it is obscured most from the public and neighbors in that location. Once a permanent home is located for the set we will execute a landscape plan to further obscure it from view.

**State what conditions are peculiar to the property that require a variance.**

Due to the position of 422 on this plat of land, there is no room to to place this accessory structure behind a line parallel to the rear of the principal structure. This property also has an existing accessory building on property. There was conversation about attaching the swing set to the existing accessory building but the astetics of such an addition is not desirable.

**Did the harship result from actions taken by the applicant or proprty owner?**

No

**State how the requested variance is consistent with the spirit, purpose, and intent of the ordinance.**

The Selmensberger family is asking for permission to place this structure in an area other than a line

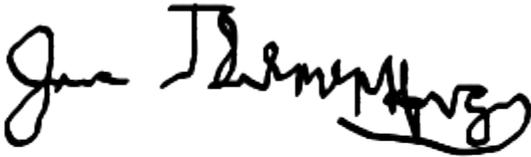
parallel to the rear of the principal structure as the principal structure is built on the rear setbacks. Any location behind this line would fall in the rear setbacks. There is also not an optimal area within these setbacks that would obscure the swing set from view as well as locations in the wooded area to the right of the home. We are requesting an area that can be obstructed from view with current topography, landscaping as well as further landscaping.

In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with the Zoning Ordinance. Violations of the provisions of the variance granted including any conditions or safeguards which are part of the granting of the variance, shall be deemed a violation of the Zoning Ordinance. I hereby certify that the information set forth above is true and accurate to the best of my knowledge.

**Signature**

**Date**

8/1/2016

A handwritten signature in black ink, appearing to read "Joe Thompson". The signature is written in a cursive, somewhat stylized font. Below the signature, there is a horizontal line that spans across the page.

