



To: Members of the Board of Adjustment, Applicants & Neighboring Property Owners
From: Jonathan B. Kanipe, Town Manager
Date: January 21, 2022
Re: **RESCHEDULED DATE**
Board of Adjustment Meeting – January 31, 2022

Applicants

You or a representative **MUST** attend the 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 the project is approved, please be prepared to present your project to the Design Review Board on Thursday, January 27, 2022 at 5:30 p.m.

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>.

Parties with standing or members of the public are invited to attend the meeting at 4:00 p.m. on Monday, January 24, 2022.

******NOTICE******

**This meeting has been rescheduled to
Monday, January 31, 2022 at 4:00 P.M.**

AGENDA

FACE COVERINGS REQUIRED FOR ALL ATTENDEES REGARDLESS OF VACCINATION STATUS

**A ZOOM LINK IS PROVIDED ON THE FOLLOWING PAGE
FOR THOSE WISHING TO PARTICIPATE REMOTELY.**

**The following items of business will be considered by the
Biltmore Forest Board of Adjustment on Monday, January
31, 2022 at 4:00 pm in the Town Hall.**

1. The meeting will be called to order and roll call taken.
2. The minutes of the December 20, 2021 regular meeting will be considered.
3. Hearing of Cases (Evidentiary Hearings, Deliberations & Determinations).

Case 1: 100 Chauncey Circle – Special Use permit request for stone steps and boulder placement within front yard

Case 2: 129 Stuyvesant Road – Special Use permit request for 12'x20' accessory storage building within side yard

Case 3: 33 Hilltop Road – Special Use permit request for retaining wall in side yard and approval for tree removal and replacement plan.

Case 4: 35 Hilltop Road – Variance request for garden wall within front yard setback and Special Use permit request for accessory structures.

4. Adjourn

January 31, 2022 Town of Biltmore Forest Board of Adjustment Hearing

<https://us02web.zoom.us/j/84117132207?pwd=THdqNjhBRTMzRmlRbEN0eG50K21MZz09>

Meeting ID: 841 1713 2207

Passcode: 645105

One tap mobile

+13017158592,,84117132207#,,,,*645105# US (Washington DC)

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Meeting ID: 841 1713 2207

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Find your local number: <https://us02web.zoom.us/j/84117132207?pwd=THdqNjhBRTMzRmlRbEN0eG50K21MZz09>

MINUTES OF THE BOARD OF ADJUSTMENT MEETING
HELD MONDAY, DECEMBER 20, 2021

The Board of Adjustment met at 4:00 p.m. on Monday, December 20, 2021.

Members present: Mr. Greg Goosmann, Mr. Robert Chandler, Mr. Lowell Pearlman, Ms. Martha Barnes, Ms. Lynn Kieffer, and Ms. Rhoda Groce. Mr. Jonathan Kanipe, Town Manager, Mr. Harry Buckner, Public Works Director, Ms. Laura Jacobs, Town Clerk., 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

Ms. Mary Hiers

Mr. David Sandridge

Ms. Celeste Sandridge

Ms. Karla Diamond

Mr. Andrew Franklin

Ms. Karen Franklin

Ms. Charlene Price

Mr. William Swords

Mr. Matt Baker

Mr. Ben Lehman

A motion was made by Mr. Robert Chandler to approve the minutes from November 15, 2021. Ms. Lynn Kieffer seconded the motion. The minutes were unanimously approved.

HEARING (Evidentiary):

A Special Use Permit was requested for an outside fireplace and patio covering at 23 Amherst Road. Mr. Lowell Pearlman shepherded the matter. Ms. Mary Hiers represented the homeowners and said they are applying for a patio with a covering. It will be an attractive addition to the home. It will be a blue stone patio with a built in fireplace to the side. There will also be a place for grilling. It will have a shed roof. Mr. Pearlman asked Mr. Sandridge if he spoke to the neighbors about that project. Mr. Sandridge said no, but assumed they would be ok with the project. Approximately 10-15 trees will be added for additional buffering. Additional buffering will be added if requested by neighboring property owners.

DELIBERATION AND DETERMINATION:

Mr. Pearlman restated the facts and said David and Celeste Sandridge are applying for a Special Use Permit for an outside fireplace and patio covering. It will not be a screened in patio. There will be 10-15 trees planted for screening purposes. It does not infringe on any setbacks. Additional screening will be provided if necessary.

Ms. Lynn Kieffer made a motion that a Special Use Permit be requested to David and Celeste Sandridge of 23 Amherst Road for construction of a side patio, roof covering, and outdoor kitchen and the facts as recited by Lowell Pearlman and his summation be accepted as findings and facts to support this grant. The Board has inspected this site and no neighboring property owner has

objected. Ms. Kieffer further moved the Board define that granting this Special Use Permit (a) would not materially endanger the public health or safety if located where proposed and developed according to the plans as submitted and improved, (b) met all required conditions and specifications of the Town of Biltmore Forest Zoning ordinance, (c) would not substantially injure the value of adjoining or abutting property, and (d) would be in general conformity with the plan of development of the Town of Biltmore Forest and its environs as set forth in Sections 153.110 (C)(2-3) of the above ordinance. The applicant has been informed that he/she is to report to the Zoning Administrator within seven (7) days of completion of the project in order that the Zoning Administrator can determine that the project has been completed in accordance with plans submitted to the Town.

Ms. Rhoda Groce seconded the motion. The motion was unanimously approved.

HEARING (Evidentiary):

A Variance request was submitted for retaining walls within the front yard setback and a Special Use Permit request for accessory structures at 10 Buena Vista Road. Ms. Karla Diamond elaborated on the project. Ms. Lynn Kieffer shepherded the matter. Ms. Diamond is requesting several retaining walls to assist with tree preservation. Ms. Diamond explained the location of the retaining walls. The retaining walls will be put in as a worst-case scenario after the work is done. They might not be needed. Chairman Goosmann asked Ms. Diamond if she would be willing to place additional buffering if requested by a neighboring property owner. Ms. Diamond said yes.

DELIBERATION AND DETERMINATION:

Ms. Lynn Kieffer restated the facts and said Ms. Diamond is requesting a Variance for retaining walls within the front yard setback and a Special Use Permit request for accessory structures. Additional buffering will be provided if needed.

Mr. Lowell Pearlman made a motion to grant a Special Use Permit and Variance to Preston and Karla Diamond at 10 Buena Vista Road for an accessory structure and a Variance for retaining walls 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. Mr. Pearlman further moved the Board define that granting this Special Use Permit (a) would not materially endanger the public health or safety if located where proposed and developed according to the plans as submitted and improved, (b) met all required conditions and specifications of the Town of Biltmore Forest Zoning ordinance, (c) would not substantially injure the value of adjoining or abutting property, and (d) would be in general conformity with the plan of development of the Town of Biltmore Forest and its environs as set forth in Sections 153.110 (C)(2-3) of the above ordinance. The applicant has been informed that he/she is to report to the Zoning Administrator within seven (7) days of completion of the project in order that the Zoning Administrator can determine that the project has been completed in accordance with plans submitted to the Town.

Mr. Pearlman 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. The motion was unanimously approved.

HEARING (Evidentiary):

A Variance request for exceedance of a detached accessory building and maximum roof coverage and extend beyond the parallel to rear of the building and a Special Use Permit request for a detached accessory building at 11 Brookside Road. Mr. Andrew Franklin and Ms. Karen Franklin presented this project last month to the Board and provided revisions this month. Ms. Rhoda Groce shepherded the matter. Ms. Groce said now the current proposal is an accessory dwelling with a single car garage, which is 813 square feet of roof coverage. This is an overage of 8.4%. Ms. Barnes asked Mr. Franklin what the hardship is for the Variance. Mr. Franklin said part of the hardship is the topography of the lot. Mr. Franklin said less trees would have to be removed as well. Approximately five trees will need to be removed as opposed to 10-15 trees. Chairman Goosmann asked if Mr. Franklin spoke to the neighbors about the project. Mr. Franklin said yes, the neighbors are in favor of the project and have no objections.

DELIBERATION AND DETERMINATION:

Ms. Groce restated the facts and said Mr. Andrew Franklin and Ms. Karen Franklin are applying for a Variance at 11 Brookside Road of a detached accessory building, maximum roof coverage and expanded beyond the rear of the building. They are also requesting a Special Use Permit for a detached accessory building. This is for a garage and cottage for a family member.

Ms. Barnes made a motion and moved that a Special Use Permit and Variance be granted to Mr. Andrew Franklin and Ms. Karen Franklin of 11

Brookside Road and 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. Ms. Barnes further moved the Board define that granting this Special Use Permit (a) would not materially endanger the public health or safety if located where proposed and developed according to the plans as submitted and improved, (b) met all required conditions and specifications of the Town of Biltmore Forest Zoning ordinance, (c) would not substantially injure the value of adjoining or abutting property, and (d) would be in general conformity with the plan of development of the Town of Biltmore Forest and its environs as set forth in Sections 153.110 (C)(2-3) of the above ordinance. The applicant has been informed that he/she is to report to the Zoning Administrator within seven (7) days of completion of the project in order that the Zoning Administrator can determine that the project has been completed in accordance with plans submitted to the Town.

Ms. Barnes further moved that granting this Variance satisfies the applicable Sections of 153.110(D) and paragraphs one through four, and would not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Ordinance would, in this case, result in a practical difficulty or unnecessary hardship. She further moved the Board to find the spirit of the ordinance would be observed, public safety and welfare secured and substantial justice done. The applicant has been informed that he/she is to report to the Zoning Administrator within seven (7) days of completion of the project in order that the Zoning Administrator can determine that the project has been completed in accordance with plans submitted to the Town.

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

HEARING (Evidentiary):

The last matter was an appeal of a zoning determination regarding a turf field at 9 Holly Hill Road. Ms. Charlene Price provided a letter regarding a letter addressed to the Board regarding this case. Mr. Billy Clarke said this letter could

not be addressed at the meeting if the person who wrote the letter is not present at the meeting. Mr. Clarke said the Board would view the letter. Ms. Price said the letter is from Ms. Marcia Grant.

Mr. Clarke read the letter to the Board from Ms. Grant, which was dated December 20, 2021 and addressed to the Board of Adjustment and Board of Commissioners:

To Whom it May Concern,

We have lived on Holly Hill Rd. for 36 yrs. We like our neighbors and don't want to take sides with the soccer field saga. We raised our children on this street and are understanding of children and their need for a play area within their own property. We also empathize with the concerns of adjacent neighbors to the sights, runoff, and sounds that may be the result of those play areas.

We do have concerns though when it comes to safety and being in construction ourselves, are especially aware that the deck at 9 Holly Hill Rd. has been unfinished for probably over a year. Not only is there no railing for safety, there aren't even any deck boards over the joists. This would be a certain OSHA violation on a commercial construction site. Also, there is no fence around the pool area. We do appreciate though the removal of the shed and the construction trash from the visibility of the road which has occurred as a result of this process.

We have been made aware that the agenda for tonight's meeting lists me, Marcia Grant, as accepting of the trellis proposal. Let me be clear. I had an impromptu discussion with Ben Lehman one day while I was walking my dog. Ben said he had consulted with a professional landscaper who suggested a trellis on the top of the retaining wall as an option and asked me what I thought of it. I told him, I didn't really care what option he chose. After thinking about it later though, and discussing it with Rick, my husband, we did realize that a trellis may not be the best choice. In fairness to Ben, he was not made aware of this reconsideration, but I also didn't think he would take my off the cuff remark as validation. There was no mention of size, height, material, etc. If the objective is to screen the soccer goal from the street,

the height of the trellis would probably have to be over 6'. Because this trellis would be closer to the street than the goal, it would be more visible and potentially more offensive than the goal itself.

Another consideration would be the maintenance required if it is built out of a wood product. This would be a burden to the Lehmans as well as this Board to oversee and contend with for years to come. For the record, we would like to say that we would prefer a natural buffer, or at least a combination of trellis (4' high or less) and some plantings to soften the appearance. This may not completely screen the goal but at least it would distract the sight line to the goal.

Finally, the town administrators have the responsibility to grant variances and enforce ordinances without getting neighbors overly involved. We appreciate the fact that the Board is trying to reach a compromise, but the bottom line is the Board has to make a decision and time is of the essence. The longer this process continues, the more contentiousness grows. The Board's decision, while considering input from neighbors, should be made based on fact –

- *What is allowed?*
- *What was approved?*
- *Were the improvements inspected during and after construction?*
- *Were the improvements altered and if so, to what degree?*
- *Did the alterations substantially change the scope and intent of the project?*
- *Has precedence been created?*
- *Will precedence be set?*

Your decision should be made with consideration to what is best for all of Biltmore Forest, not just a portion of it and a few of its residents. Thank you for your considerations.

*Marcia and Rick Grant
12 Holly Hill Rd.*

Mr. Jesse Swords, representing Ms. Charlene Price, thanked the Board for having them back. Mr. Swords informed the Board Ms. Price has some background statements to make about the situation as a whole. Mr. Swords also told the Board he would have legal input as well. Ms. Price addressed the Board. Ms. Price said this will be the last time she appears in front of the Board and has prepared a statement of what has gone on for the past six months at 9 Holly Hill Road. Ms. Price said she is addressing three issues; Mr. Lehman's intent, the unpermitted goals and the appeal today, and Ms. Price's role as a resident of Biltmore Forest. Ms. Price addressed the following with the Board:

Biltmore Forest Board of Adjustments Town Manager Jonathan Kanipe, Town attorney Billy Clark, and all other town officials Good afternoon, happy holidays. I am testifying here today to go on the record with a prepared statement and review of facts concerning the ongoing property changes at 9 Holly Hill Road in Biltmore Forest. I will review three areas:

Mr. Lehmans intent:

The unpermitted goals and the appeal addressing the soccer field.

My role as a resident of Biltmore Forest and as one of your constituents

I received notice in July of a hearing for a special use permit for 9 Holly Hill Road. The issue was regarding the unpermitted and unauthorized installation of regulation size goals and nets located on a 4000-square foot artificial turf field and specific to this special use permit - the goals stand 8 feet high and 24 feet wide. This structure sits in Mr. Lehman's side yard not his rear yard This is important because Mr. Lehman refers to his rear yard in his many applications. When in fact this entire structure is completely visible from the street. There is a photo reference in your packet. At that meeting, neighbors and I submitted many reasons that supported our objection to the specialuse permit. Not only Specific to this structure but to the many ongoing projects on the property as well.

One important reason many neighbors, including me, objected to this special use permit is

that the best indicator of future behavior is past behavior.

Since 2016, when Mr. Lehman moved into the property at 9 Holly Hill Road, there has been ongoing construction and renovation to his property.

When moving into his property in 2016, Mr. Lehman failed to install the required fencing around the pool area in accordance with NC codes and safety requirements. When pressed, Mr. Lehman re-confirmed his commitment to install the required fencing as part of a separate 2018 renovation plan submitted to this board. The required fencing around the pool has not yet been completed

-five years after moving into his home, despite his commitment to complete the required fencing, and despite his including it in several proposals submitted to this board, and despite this board pressing him on this issue. Only when absolutely forced did Mr. Lehman start construction on the required fencing over these past few months.

Mr. Lehman built an unauthorized storage shed on his property (to the side and visible from the street) and did not secure proper permitting and approvals. This board required Mr. Lehman to relocate it to the back of his property.

The 2018 renovation plan he presented to this board stated a completion date of that same year. And while materials and supplies arrived immediately and have sat on his property on and off for the better part of three years, it is not yet finished. For example, the green construction wrap used on houses before brick or siding is installed is still on display on the rear of Mr. Lehman's home and within view of my property. There is a photo reference in your packet.

In addition, the deck and the steps have not been completed from the original plan from 2018. There is a photo reference in your packet. And just as important is that this incomplete renovation plan was changed substantially without approval or knowledge of the town or the BOA. Specifically, the BOA approved a fescue grass play area and a robust landscape design. Mr. Lehman instead installed a 4000-square-foot sub-base structure to which he attached artificial turf and an added an 8-foot-tall permanently installed goal. As well, Mr. Lehman committed in his 2018 proposal to more than 200 plantings to enhance his entire property.

When Mr. Lehman came to this board in 2021 to request a special use permit, none of the plantings that he committed to in 2018 had been installed. None.

Mr. Lehman's disregard for this town's policies and procedures is ongoing. There appears no effort on Mr. Lehman's part to comply with the covenants of this community and neighbors have no confidence that Mr. Lehman will follow through on his commitments in a timely or reasonable manner.

Mr. Lehman's past behavior, as well as the negative impact and environmental risks of the artificial soccer field brings me to this point.

I had never done anything like this before. In July, when I was alerted to the special use permit for the permanent soccer goal, I asked two different town officials if I could submit a letter of objection. Both recommended that a letter would not work as effectively as a sworn testimony and that a letter "will not be nearly as effective as you going in person." As well, one of the town officials shared with me, "you have the town's support, the town would like to see the artificial turf field go."

As a resident of Biltmore Forest, I accepted these recommendations on good faith believing the governing bodies would follow and enforce the ordinance, regulations, policies and codes that govern our town and to which they are sworn to uphold.

I say this to emphasize the fact that I had no idea I was embarking on a journey where my neighbors and I would bear the burden of proof; where I would spend thousands of dollars in legal counsel to understand and navigate this process; where I would witness a neighbor with a proven and ongoing track record of actively and flagrantly ignoring rules and regulations; and that I would witness him would prevail (with the apparent support and encouragement of this board!)

My first appearance before this board was on July 22.

Two neighbors attended the meeting with me. Not only did the three of us submit our objections in person to the special use permit for the permanent goals that are part of the

unauthorized turf structure, we had letters from two additional neighbors objecting to the unauthorized project.

I also submitted for the record a letter from a respected and experienced realtor that addressed specifically how the unauthorized turf structure negatively impacted values of surrounding property, and how the unauthorized turf structure was not in keeping with the neighborhood landscaping and appearance - which are clearly stated repeatedly in the policies and ordinances intended to govern this Town.

I naively assumed this would be an easy decision based on the following five factors:

- 1. Two specific violations of Town ordinances and regulations (negative impact on property value and not in keeping with neighborhood);*
- 2. Written testimony from a subject matter expert addressing these two violations;*
- 3. on the record objections from FIVE neighbors;*
- 4. unauthorized construction and installation of a structure (including the goals) that the Town of Biltmore Forest had already deemed unpermitted and illegal.*
- 5. Mr. Lehman rejected several recommendations by the BOA to alter in any way his unauthorized structure to bring it more into compliance (paint the goals, lower the goals, etc.) He made no concessions and in fact, Mr. Lehman stated that it was critical his children play and practice on a regulation-size goal and that painting or adjusting the goals would negatively impact their playing experience.*

Then out of left field Board of Adjustments member Mrs. Barnes (who was responsible for shepherding Mr. Lehman's case) asked Mr. Lehman if he would like to consider screening as an option to order to keep the unpermitted structure, and started brainstorming landscaping options. And all of a sudden, the BOA is recommending superficial and cosmetic landscaping ideas to for a flawed and unauthorized structure in a futile effort to disguise its fundamental failings.

My neighbors and I were shocked. All of us objected on the record to this recommendation. I expressed on the record to the board my disappointment and following

the meeting a BOA member reached out to me to say I had other options in this case. It was suggested that I consider securing an attorney. This confused and surprised me.

Why on earth would I need an attorney? The Board of Adjustments, from what I know to be true, exists to protect the beauty and integrity of this community. I naively assumed it exists to protect neighbors in good standing. Neighbors like me. The rules and requirements seemed clear. To suggest that I needed to pay an attorney to convince a governance board to follow through on their assigned responsibilities specific to a resident who consistently and flagrantly disregards the rules seemed absurd.

Then the BOA spent August, Sept. and October going back and forth to determine if Mr. Lehman's hand-drawn landscape plans - HAND DRAWN - could adequately screen the unauthorized 4000-square-foot artificial turf field with permanent 8-foot goal posts.

Discussions went on and on about the trees, shrubs, types of plantings, density of plantings, plants indigenous to this area, pots versus no pots, who was responsible for monitoring, what happens if some of the plants die.

And all the while, a much more critical issue was never seriously addressed. Could my property lose value because my next-door neighbor installed an illegal 4000-square-foot artificial turf field in his side yard that cannot, even by Mr. Lehman's own admission, be fully screened. The board was quick to dismiss the devaluing of neighboring property and Mr. Lehman was given months and months of landscaping screening do-overs. And while Mr. Lehman declined the recommendation of the BOA to work with a professional landscaper stating he did not want to spend \$5000 on such a plan, you continued to coach Mr. Lehman on how to make this work. Why didn't the board suggest that I bring further evidence of the devaluing of my property? Because this board was focused a screening plan to would allow Mr. Lehman to keep his illegal goals. During this time, I learned that the illegal, permanent 8x24-foot goal posts are one ruling and that to have the entire structure removed requires neighbors to do more work. So I do. And I become somewhat of an expert on artificial turf. Because at the end of the day, this is not about screening. This

board is setting a critical precedent that impacts not only the beauty and design of our community and value of neighboring properties, but also the quality of our water system and our approach to environmental stewardship. And there will only be more of these kinds of cases to come before this board and it's important for this board to understand the long-term impact of this decision.

I have done extensive research on how artificial turf field is constructed and installed. That research has been submitted to Jonathan and town administrators and is included in the packet I have provided to you. There are many resources addressing both the pros and cons of artificial turf fields. Without fail, however, all artificial turf experts recommend professional installation.

Professional installation of artificial turf is recommended for two reasons:

1) a permanent base structure and edging system - commonly made of timbers, composite plastic or steel 2x4's - is required to secure the artificial turf to size and to ensure it won't slip and slide. As well, the turf can be secured to layers of composite materials that have been permanently installed. The turf is attached to this permanent structure - also called a sub-base - with six-inch galvanized steel garden pins or galvanized metal spiral landscape stakes.

2) and because proper drainage is an absolute must. The artificial turf is designed with thousands of tiny holes because the turf is pervious and needs to drain water quickly. After all, 4000 square feet of run-off water must go somewhere quickly - and that's why proper drainage like exit drains, French drains and catch basins are required. Remember, water draining off the artificial turf can't just soak down to the soil because of the impervious structure - the sub-base - to which the turf is attached. So it needs help getting to the right place, because if the water is not appropriately diverted and drained, it can create run off and flooding.

Artificial turf kills the soil beneath, is in no way environmentally friendly and is not recyclable. Also note, if not regularly and properly cleaned and maintained, artificial turf can

mold, mildew and smell. As well, if not regularly and properly maintained and cleaned, any run off into ground water systems or adjoining property can be toxic. As the turf ages, the tips of the plastic turf break and are released into the environment. While made of plastic, artificial turf has an average life span of six to ten years and must be disposed at a landfill.

The artificial turf field and substructure was never inspected by town administration because Mr. Lehman installed and constructed it without knowledge or approval of the town. In fact, the artificial turf and substructure was completed over two years before town officials brought the case before the BOA.

Because Mr. Lehman installed the turf and substructure without knowledge or approval of the town, there is no record that any type of qualified licensed professional oversaw the installation and construction of the artificial turf field.

It must be noted that the backdoor neighbor to Mr. Lehman, Mrs. Andrea Eglington, has experienced three major floods causing thousands of dollars in damage and repairs, with the most catastrophic occurring in 2018. The ongoing and often unsupervised construction work (including the unauthorized artificial turf soccer field, extensive removal of vegetation and installation of impervious surfaces) at 9 Holly Hill Road has caused significant topography changes relevant to Mrs. Eglington's flooding. She has lived on the property for over 25 years without ever a problem of run off or flooding.

This board's eagerness to accommodate a neighbor who has shown no regard for this board and for his neighbors is disappointing and discouraging. In the meantime, Holly Hill neighbors have worked to maintain good standing as residents and feel like we are on the ~~edge~~ ^{side} Holly Hill neighbors have attended all BOA meetings to oppose the special use permit.

A letter was submitted for the record by one of the top-producing realtors in this area confirming the impact of this structure to the aesthetics and beauty of the neighborhood as well as the impact on property values.

Later she was brought in as a sworn expert and then discredited when Mr. Clarke asked

questions that were, even by expert standards, impossible to answer and served instead to distract and redirect back to the homemade landscaping plan.

This is the only time during this six-month process that neighboring property values were mentioned and discussed and yet it is one of the most critical criteria for special use permits as outlined by the Town ordinances.

I am doing all I can to play by the rules but can't seem to understand the rules. So in the fall I hired an attorney - which doesn't feel great. But people whose opinion I trust - including a member of this board - counseled me to do so. I had no idea that once I hired an attorney, the very group I look to for support and counsel (you all) can no longer speak with me because I now have legal counsel (per Mr. Clark's recommendations}. It feels like I have put everyone on the defensive by following through on a recommendation from members of this group. All of a sudden a slow process is slowed down even more by a ~~new~~ layer of communication requirements. It was disheartening.

On Oct. 18, my attorney submitted a request for a zoning determination from the town that it would determine the entire field as an accessory structure due to the complexity and requirements of the permanent sub-base which acts as the required installation system.

Jonathan Kanipe confirmed that he and Mr. Clark would make that determination and alert my attorney, Jessie Swords, and me to their decision on or before the 8th of November so that we could respond and prepare, if needed, for the Nov. 15 BOA meeting.

I never heard from Mr. Kanipe on or before Nov. 8. I followed up with Mr. Kanipe on Thursday Nov. 11 and he confirmed he had not met with Mr. Clarke. My lawyer and I received a denial of my request on Fri., Nov. 12 - one business day before the next BOA meeting and no time to prepare. We immediately requested additional information from Mr. Kanipe and Mr. Clark in defense of their decision and are appealing this decision.

In the meantime, I was on the lookout for the agenda packet to see if it had any details that would help my lawyer and me prepare for anything specific to the landscaping proposal of the 8-foot tall goals or the decision on the entire field as an accessory structure. According to the

Biltmore Forest website, the BOA agenda packet is generally distributed a week prior to the scheduled BOA meeting - in this case it should have been posted no later than Monday, Nov. 8. When it was not posted on Nov. 8, I reached out directly to the chair of the board on Thursday, Nov. 11 asking about the status of the agenda. He confirmed he could not speak with me directly based on direction from Mr. Clarke and referred by question to the town. And on Friday, Nov. 12 - one business day before the BOA meeting, my lawyer and I received the agenda packet for the meeting that was scheduled for the following Monday.

Since July, I have been hustling to play catch up - trying to crack a steep learning curve on how governance and policy work; how to read the rules and regulations; how artificial turf works and more. I don't know what I don't know. And an important way I can learn and understand is to depend on people who know these things. I have been constantly chasing information, answers and access to the point of likely appearing a nuisance. How could a person like me begin to adequately prepare for these meetings - I don't have any professional training; I don't have an advocate like Mr. Lehman has; and I have one business day to review the agenda, the attachments, consult with my lawyer and so on.

So you can imagine my absolute shock - instead of a review of the hand-drawn landscape designs that his group has volleyed around SINCE JULY, the agenda packet contained an entirely different recommendation - a six-foot tall wooden lattice system (intentionally not called a fence, but essentially a fence). After six months of tedious, weedy discussion re type, growth and size of specific plants, my lawyer and I receive 24-hour notice of an entirely new approach

I was literally rendered speechless. No time to study, no time to prepare and no time to truly understand or communicate that the current artificial turf field extends to the parallel line of the main structure on the property and that the retaining wall to which the six-to-eight foot trellis (that is not a fence, but really is a fence) will be attached extends well beyond the front line. So if approved, you are basically setting precedent - and changing an important ordinance - that would give every Biltmore Forest residents permission to build a 6 or 8 foot trellis completely around their property or anywhere on their property and use it to shield anything they like.

In summary, I cannot understand what the Biltmore Forest Board of Adjustment or the Town expects of me or any other resident in this situation.

Neighbors can't always come to a resolution and it's unreasonable for you to think they can. It's one reason why our town's governance structure exists and it's one of the responsibilities of the BOA - to make the hard decisions in service to the greater community.

I have abided by all the rules; I am not the one who has consistently broken ordinances, policies or codes. I have been willing to follow the direction and counsel of those in the know. I am trying to do the right thing and to be a responsible resident. Why do I feel like I am the bad guy? Why am I required to spend thousands of dollars on an attorney to navigate a process created to protect my interests? Why are my neighbors and my neighbors expected to agree to something - to keep the peace, so to speak - or facilitate the board not having to make the hard decisions.

This case should have never gotten to this point and would never had gotten to this point if the BOA had simply enforced compliance and upheld the rules that are supposed to govern ALL of us. Consider the time, energy, money, anxiety and stress that would have been avoided if this board had exercised their legal duty and simply required Mr. Lehman to remove the permanent goals in July. How hard would that have been?

Meanwhile, Mr. Lehman knowingly breaks ordinances, codes, regulations and policies that govern our town and fails to follow through on his commitments - and he has been granted forgiveness and accommodations EVERY TIME since his arrival in 2016. What message does that send to the residents of Biltmore Forest-the majority of whom would be appalled this was happening next door to them and many of whom are watching closely the outcome of this case?

The final outcome of this case will influence the regard our residents have for our governance. Perhaps leading even more to think that they can build what they like as

they like and ask forgiveness later. Because it will be given.

I conclude by reminding this group that I felt compelled to share these facts and my perspective in hopes that it will positively influence your perspective and the cases that might come for you in the future.

I implore you to not forget the responsible residents who abide by the rules and seemingly bear the unfair stress and responsibility of upholding and enforcing them. Consider what is best for the entire community, not just one who has acted irresponsibly.

Thank you and merry Christmas.

Mr. Matt Baker spoke. Mr. Baker said the original plans are not the same as the current landscaping plans. Mr. Baker said there was no inspection done through this process and said there was a mistake made. Mr. Baker felt if the plan would have went through the proper process and the neighbors were informed along the way, there would have been objections made and things would have been stopped.

Mr. Baker also said many of the objections have not been put into the record properly.

Some of the letters of support were put in but some letters of objection were not put in. Mr. Baker said there were two letters of support provided and there were four objections provided. Mr. Baker stated there was only one objection letter provided in the record. Mr. Clarke asked Mr. Baker if this information is relevant to the appeal. Mr. Baker said yes. Mr. Clarke said the decision made on the accessory structure was determined by Mr. Kanipe in October. Mr. Baker said this is an accessory structure. Mr. Baker said no one could objectively look at this and not call it an accessory structure. Mr. Baker said part of his concern was the safety, the surroundings, and trying to patch things up such as screening and/or putting in a trellis/fence. Mr. Baker would like to see the work done in a timely and safe manner with proper plans provided. Mr. Baker said he would like to see the board help Ms. Price as much as possible to help her feel like it will minimize her property, which would be the right thing to do. Mr. Baker said the landscaping window should be shortened to three months and putting plants in the ground is easy. Mr. Baker said there have been pots sitting

out in Mr. Lehman's yard for months. Mr. Baker said this needs to be done so everyone can move on and the rules need to be enforced, which was not done during this process. Chairman Goosmann thanked Mr. Baker for his comments and that the issue of enforcement was addressed at the last meeting.

Ms. Barnes said she heard concerns about what was approved last month and there was a Variance for what was approved last month that the Board didn't consider. Ms. Barnes said she has not heard or understood if anyone is appealing the decision that was made last month. Mr. Clarke said there is no appeal to what the Board did last month. Ms. Barnes clarified there would be a process if they wished to appeal. Mr. Pearlman asked if the purpose of this effort now to appeal the Town Manager's decision as to what an accessory structure is. Mr. Clarke said yes, this is what the Board is discussing today. Chairman Goosmann said they are taking testimony about in support of their request for the appeal of the decision that the Town Manager had made regarding the turf field.

Mr. Clarke said Mr. Swords asked for Charlene Price that the Town Zoning Administrator, Mr. Kanipe provide a written determination to him pursuant to North Carolina G.S. 160-D(403) that the turf field was an accessory structure. Mr. Kanipe made the determination that it was not an accessory structure. Ms. Price and Mr. Swords are appealing that determination. Mr. Pearlman said this is the only time he has ever seen specific definitions of accessory structures related to an artificial turf installation. Ms. Kieffer said we have gotten this before with the installation of the turf. Chairman Goosmann said in the past, the bulk of the discussion was regarding the soccer goal.

Mr. Swords said, in the previous meetings, we were focused on the goal and the Board was treating the turf field as a separate issue. Mr. Swords said they asked for a determination on the separate issue and the determination was that it is not an accessory structure. Mr. Swords said they are appealing this decision to the Board. The only thing they are appealing is the definition of an accessory structure in the Ordinance and how it applies to this AstroTurf. Ms. Barnes said the turf was never before the Board of Adjustment.

Mr. Swords said local governments in North Carolina have no inherent power; it is all with the State. What we end up with is a set of written Ordinances. Once these are passed, they are available to the public. These Ordinances are binding as they are written. It matters how these are written. It is important for these purposes for someone who wants to make changes to their land so they can comply with the requirements. There are neighboring property owners that can expect a

certain amount of predictability and the way this process happens. It also allows you to maintain the character of this Town. The Town Zoning Ordinance are what allows people from changing the character so drastically or so that it becomes unrecognizable. One of the reasons why the property value is so high is people who live in here know a McDonald's drive-thru will not be built in the Town which would destroy their property value.

Mr. Swords discussed the ordinance wording. One has to abide by what the ordinance says. North Carolina Zoning Regulations "cannot be construed to include or exclude by implication that which is not clearly in their expressed terms." It is important because Zoning Regulations are construed very strictly. Secondly, the common and ordinary meanings of non-technical words should be applied unless the Ordinance specifically defines the term. Common and ordinary means of non-technical words. Third, the Ordinance should be interpreted in a manner that avoids absurd or bazaar consequences which Mr. Swords specifically used "accessory structure" as an example. Section 153.004 in the Ordinance are the specific definitions. Every accessory structure is a Special Use and every resident who builds an accessory structure must obtain a Special Use Permit. A Special Use Permit allows the Town to ensure the accessory structure in questions don't disrupt the Town's character and its environs. The definition of accessory structure was read by Mr. Swords which states: 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.

Mr. Swords said Zoning regulations are against the common law principle in property. They are construed very strictly. Secondly, Mr. Swords said the common and ordinary meaning of non-technical words should be applied unless the Ordinance specifically defines the term. Common and ordinary means of non-technical words. Third, the Ordinance should be interpreted in a manner that avoids absurd or bazaar consequences. This applies specifically to the definition of accessory structure in 153.004. Mr. Swords repeated the definition of the word accessory structure (stated above). Mr. Swords said this definition is a very broad definition of structure. Accessory structure was defined but Mr. Swords said the word "structure" was not defined. Mr. Swords said Mr. Kanipe's determination letter stated the word "structure" means a "vertical structure." Mr. Swords said they are not exhausted and structures are not necessary

vertical. Mr. Swords said some solar collectors are not vertical and the facts known about the turf field materials see there is a vertical and horizontal dimension to it. Mr. Swords said Mr. Kanipe added “vertical” to it and Mr. Swords said this was inappropriate.

Common and ordinary meaning in the word “structure” were discussed by Mr. Swords. Mr. Swords read the definition from Google (definitions from Oxford languages) which states, “the arrangement of and relations between the parts of elements of something complex.” In addition, “a building or object constructed of different parts.” Third, “the quality of being organized.” An illustrated CAD drawing was submitted to the Board by Mr. Swords (included in the agenda packet available to the public). This Board should make the decision that an accessory structure is a structure by the common meaning of the term to include this turf field, as we know it. Mr. Swords said his client; Ms. Charlene Price is worried about the environmental impact of the turf. Mr. Swords included a brochure (available to the public) in the board packet of the environmental concerns of artificial turf. Mr. Swords also indicated the drainage problems this situation has also created. Mr. Swords also stated the color could also be regulated through the special use process. Mr. Swords said he drove by the soccer field and said the golf course is not this color and looks unnatural. Mr. Swords asked this case go through the special use permitting process due to the problems identified by Mr. Swords. Mr. Swords said an ordinance should be interpreted in a manner that avoids absurd and bazaar consequences. Mr. Swords referenced a neighbor asking if hot pink AstroTurf could be put down and the Town not being able to regulate color or regulate lawns. Mr. Swords asked if the Board had any questions. Mr. Pearlman said as he recalled most of the discussion revolved around the goal and then the discussion morphed into the artificial turf. Mr. Pearlman recalled the Board had no power to regulate the color of the turf and that is where that decision came from. Mr. Pearlman said they had no power to legislate against the color of the turf and that is where that decision came from. There was never any discussion from Mr. Swords about the color. Mr. Pearlman said they are regulating that this is an accessory structure.

Chairman Goosmann asked Mr. Kanipe if he had any comments to make about the appeal. Mr. Kanipe said he would just like to rely on the letter that he provided. Mr. Kanipe said on November 4, 2019 when the Town visited the site and contacted Mr. Lehman about the turf for clarification. Adrienne Isenhower, who was the Town Planner at the time did review it for the perviousness information and determined it met the overall requirement at that time. In

terms of anything else, Mr. Kanipe said he would like to refer to his letter about a “structure.” Mr. Swords said that in 2019, it wasn’t determined whether this was a structure and was only determined it was a lawn. Mr. Swords also said they were not provided written notice of this at the time.

Mr. Baker said compared with the original plan, there is a substantial change and the Board can regulate the landscaping. Mr. Baker said there was no notification or due diligence provided for people to object.

Mr. Lehman said his impression was to determine whether the synthetic turf field was an accessory structure. Mr. Lehman told the Board he felt like he was doing what he was supposed to. Mr. Lehman said he reached out Ms. Isenhower during the initial stages and was given the go ahead from Ms. Isenhower. Mr. Lehman said there were emails exchanged acknowledging this. Mr. Lehman thought he was not breaking any rules at the time since he was given the approval in the past. Mr. Lehman said it was interesting to hear Mr. Swords said one can’t add things you do and don’t want in the ordinance. Mr. Lehman said since he reads the accessory structure definition and it doesn’t include a turf field as an accessory structure, a basketball goal, or a soccer goal that it’s not an accessory structure. Mr. Lehman told the Board there should be a specific ordinance on what residents’ can and cannot have. Mr. Lehman said once decisions have been made by staff, it should be set but Mr. Lehman feels like they are going back and trying to change things. Mr. Lehman said the synthetic turf entails three inches of a sub base and it has 1x6 around the sub base. The turf field goes on top and has staples on it. Mr. Lehman said it isn’t much different than a paved driveway. Mr. Lehman said if they are determining whether the turf field is an accessory structure then asphalt driveways should be an accessory structure, pavers, pebbles that are put in. It shouldn’t apply to ground coverings. Mr. Lehman’s interpretation is that they were only going to discuss the turf field and not all the other factors involved with this.

Mr. Clarke said the Board recognizes the Zoning Ordinances only allows it to say what it can do and made a determination with some advice from Mr. Clarke back in September 2021 that it had no authority to regulate the type of turf.

Mr. Clarke said the Board could either affirm Mr. Kanipe’s decision, reverse it, or modify it or send it back to Mr. Kanipe for further instructions.

Ms. Barnes said in order for her to make a decision she would like expert testimony as to what is installed, how it was done, is there a border around it to decide whether this is a structure. Mr. Clarke said the Board has to decide based on what information was given to them.

Mr. Swords made the comment about how this turf is different from sod and said it is on top of a very precision graded, compacted base. It is also surrounded by timber and is tied to the ground so it does not move and is integral to its use as a field. Mr. Swords also addressed the issue of turf fields not being included in being an accessory structure. The definition of accessory structure written in the ordinance is written very broadly. The definition of structure written in its common use is pretty broad as well. It seems intentional by whoever wrote the ordinance to regulate people building on their land. Vertical structure is a limitation that is not written in there. The interpretation artificially narrowed it. It cannot be addressed every artificial structure the Town regulates without naming every type of structure on Earth. This was most likely the point of wording it broadly and Mr. Swords disagrees with bringing the artificial limitation bringing vertical structures into the definition if it's not built. Mr. Swords said this should have gone through the Special Use permitting process.

Mr. Lehman said if he were to put sod in that area, the amount of water needed to irrigate that area would be tremendous as well as the amount of chemicals and fertilizers that would have to be added. Mr. Lehman said there are tremendous benefits of putting in turf fields. Mr. Lehman said there are high schools all over the country that have them. Mr. Lehman said there are natural in fills and it is permeable.

Chairman Goosmann said he would now like to focus on the decision. Ms. Kieffer told Mr. Swords said she didn't feel his examples of vertical structures were very accurate.

Mr. Baker asked if in the picture submitted on Mr. Lehman's file included a retaining wall. Mr. Kanipe said the retaining wall was approved during the original permit process which is a separate matter that was already approved.

Chairman Goosmann asked Mr. Clarke if the Board is being asked to make a decision as to whether the opinion that the Town issued through Jonathan whether they wish to uphold Jonathan's decision or reject that opinion. Mr. Clarke agreed and said they could modify it and send it back.

Ms. Barnes asked Mr. Kanipe when he wrote that letter if he assumed the turf was permeable. Mr. Kanipe said yes. Mr. Swords said they are asking to Board to determine if the definition of accessory structure in the Ordinance applies to this turf field. Mr. Clarke said he didn't want to disagree with Mr. Swords but Mr. Clarke said Mr. Swords asked for a determination and the Town Administrator made a determination and the issue before them was that determination correct, incorrect, or does it need to be modified. Mr. Swords said does the definition of accessory structure apply to this turf field and hear the reasoning on all sides.

Mr. Cecil Durham spoke and asked if this would be a precedent if someone got sick of mowing the lawn and wanted to put in AstroTurf. Mr. Clarke said it could be.

Mr. Swords said this is not aesthetic installation; it is designed to specifications with multiple components to be a playing field specifically. Mr. Swords said a playing field wouldn't necessarily have the same expectations as a lawn.

Mr. Baker said the size of the field is 4,000 square feet and is a monster.

Chairman Goosmann polled the Board members would agree, disagree, modify, or send back for further proceedings regarding Mr. Kanipe's decision on behalf of the Town for the letter he wrote.

Mr. Chandler affirms the decision but wants further interpretation from the Board of Commissioners, Ms. Kieffer affirmed and agreed with Mr. Kanipe's determination and agreed that the turf is not an accessory structure but would like to see the Board of Commissioners to get involved with the safety and environmental concerns of AstroTurf. Mr. Pearlman agreed, Ms. Barnes agreed with Mr. Kanipe's ruling with the understanding that permeable, artificial turf is installed and is not an accessory structure. Ms. Barnes would like to ask the Board of Commissioners to address this in more detail in the Biltmore Forest Ordinances. Ms. Groce affirmed and agreed with Mr. Durham and said this should not happen again. All five affirmed Mr. Kanipe's letter and would like to see the Board of Commissioners look into this further.

The appeal was denied.

Chairman Goosmann adjourned the meeting at 6:28 pm. The next Board of Adjustment meeting is scheduled for Monday, January 24, 2022 at 4:00 pm.

ATTEST:

Greg Goosmann
Chairman

Laura Jacobs
Town Clerk

BOARD OF ADJUSTMENT

STAFF MEMORANDUM

January 24, 2022



Case 1 – 100 Chauncey Circle

Special Use Request for Installation of Landscape Boulders

Property Owner: David Nelson & Martha Barnes

Property Address: 100 Chauncey Circle

Project Description

The applicant has presented plans for landscape boulders in compliance with the front yard setback and outside the Town's right of way along Chauncey Circle. In addition, approximately 20 stone steps will be placed to provide safer and better access to the front berm.

Special Use Request

The Town requires a special use permit approval for the inclusion of the landscape boulders and stone steps within this project. The boulders are shown on the attached landscaping plan, as well as the approximate placement of the stone steps.

Zoning Compliance Application

Town of Biltmore Forest

Name

David Nelson

Property Address

100 Chauncey Circle

Phone

(828) 782-1120

Email

davmarde@me.com

Parcel ID/PIN Number

964670647800000

ZONING INFORMATION

Current Zoning

R-3

Lot Size

1.43 acre

Maximum Roof Coverage

5,060 square feet (Up to 1.2 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

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

na

Description of the Proposed Project

install stairs (~20) and landscape boulders to make driveway berm more accessible and viable for gardening.

Estimated Start Date

1/31/2022

Estimated Completion Date

2/28/2022

Estimated Cost of Project

\$15,000.00

Supporting Documentation (Site Plan, Drawings, Other Information)

Berm Project Docs for BF.pdf

Applicant Signature

Date
12/8/2021

D Nelson

Special Use Permit Application

Town of Biltmore Forest

Name

David Nelson

Address

100 Chauncey Circle

Phone

(828) 782-1120

Email

Davmarde@me.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:

Stairs and landscape boulders on the driveway side of berm. The berm is too steep for us to garden safely and we are hoping this access can help.

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

The stairs and boulders will only be visible from our home. No neighboring properties will see the improvements.

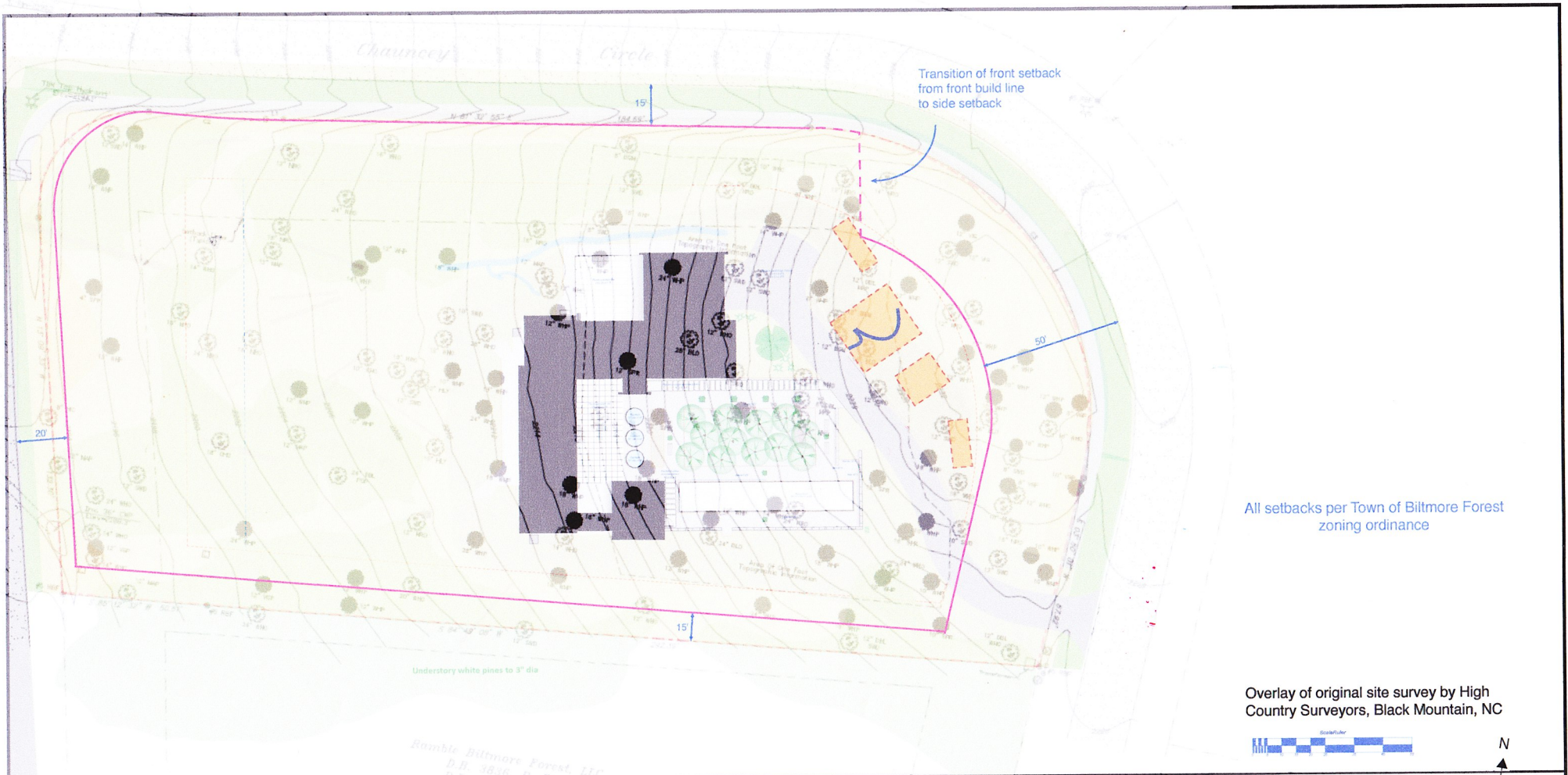
I hereby certify that all of the information set forth above is true and accurate to the best of my knowledge.

Signature

Date

12/6/2021

A handwritten signature in black ink, appearing to read 'David Nelson', written over a horizontal line.



All setbacks per Town of Biltmore Forest zoning ordinance

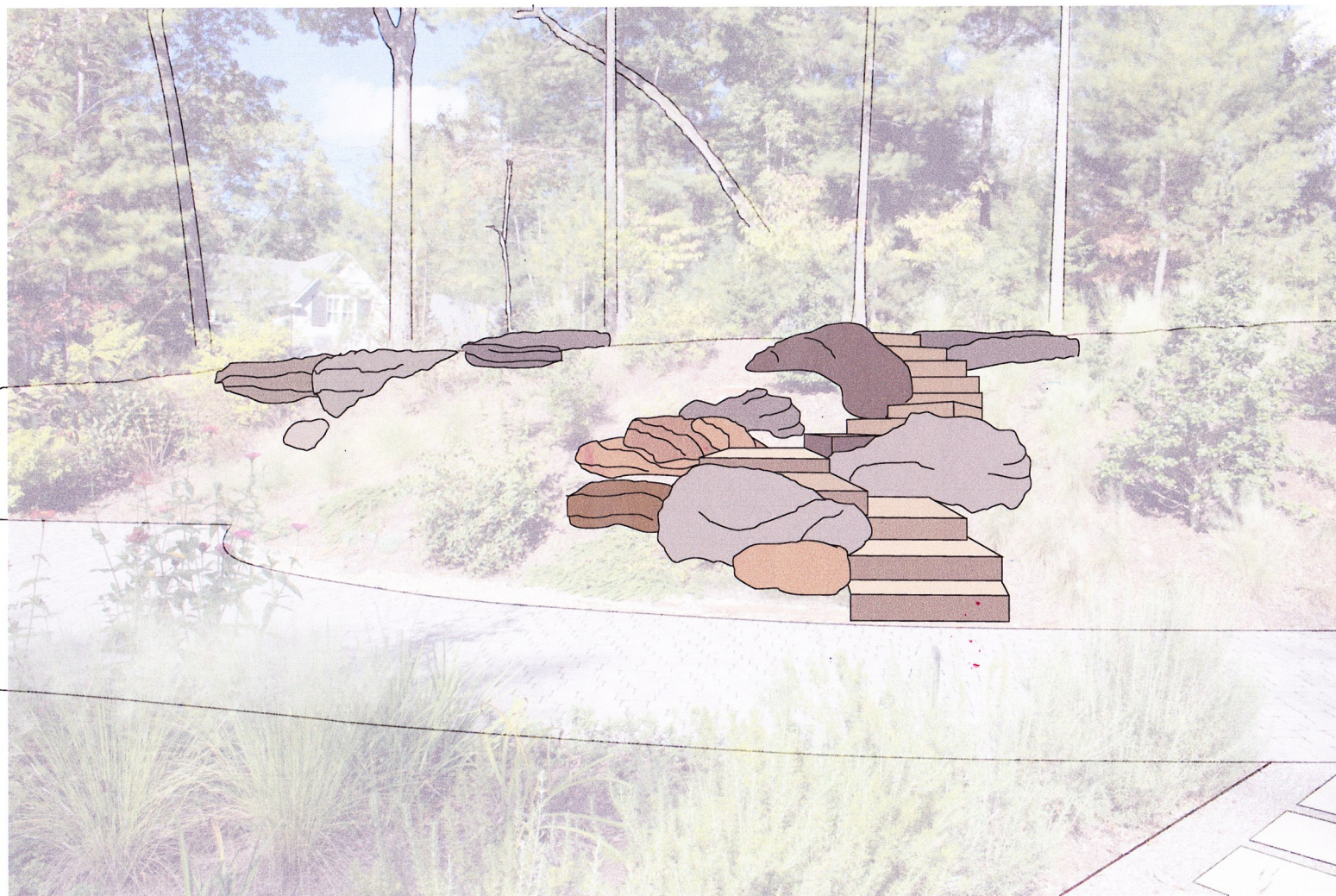
Overlay of original site survey by High Country Surveyors, Black Mountain, NC

drawn by: David Nelson V1 07-Dec-2021

Scale: 1" = 10' 0"

on 30" x 40" print

Site Plan - FOR APPROVAL Driveway Berm/Boulder Project	The Ramble - Biltmore Forest - Lot 10 100 Chauncey Circle Biltmore Forest, NC 28803	<div style="display: flex; justify-content: space-between;"> <div> Stair Pathway Boulder Placement Area </div> <div> Lot Line Setback Setback Transition </div> </div>	
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StepsTitle

Color Options
: Castle Grey



Clear selection

**Castle
Grey Steps**
Variation in
Color: Low
Available

Tennessee fieldstone landscape specimen boulders



BOARD OF ADJUSTMENT STAFF MEMORANDUM

January 24, 2022



Case 2 – 129 Stuyvesant Road Special Use Request for 12'x20' Accessory Building

Property Owner: O.E. Starnes, IV
Property Address: 129 Stuyvesant Road

Project Description

The applicant has requested a special use permit for the installation of a 12'x20' accessory building storage shed. The proposed location for the storage shed complies with all setbacks and located within the side yard. An existing shed, planned for removal, is shown on the attached plan. The new shed will be directly in front of the old shed.

Special Use Request

The Town requires a special use permit approval for an accessory building to be constructed on the property. The requirements for accessory buildings are as follows:

§ 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. § 160D-914.

Zoning Compliance Application

Town of Biltmore Forest

Name

O.E. Starnes IV

Property Address

129 Stuyvesant Rd

Phone

(203) 559-8758

Email

oestarnes4@gmail.com

Parcel ID/PIN Number

ZONING INFORMATION

Current Zoning

R-1

Lot Size

1.7

Maximum Roof Coverage

6,100 square feet (Up to 2 acres)

Proposed Roof Coverage Total

240 sqft

Maximum Impervious Surface Coverage

1-3 acres (25 percent of lot area)

Proposed Impervious Surface Coverage

0

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

15

Description of the Proposed Project

12x20 outdoor utility shed for tools and kids toys to eventually replace existing shed

Estimated Start Date

2/1/2022

Estimated Completion Date

3/31/2022

Estimated Cost of Project

\$6,000.00

Supporting Documentation (Site Plan, Drawings, Other Information)

A5162373-1CBE-4A75-BD06-8A09A4EDECAA.jpeg

Applicant Signature

Date
1/4/2022



A handwritten signature in black ink, consisting of stylized, overlapping loops and curves, positioned above a thin horizontal line.

Special Use Permit Application

Town of Biltmore Forest

Name

O.E. Starnes IV

Address

129 Stuyvesant Rd

Phone

(203) 559-8758

Email

oestarnes4@gmail.com

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

Accessory Buildings

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:

12x20 utility shed for tools and kids toys to eventually replace existing shed.

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

Generally out of sight of neighbors and passers by from street. Attractive design, quality construction with trim.

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

Signature

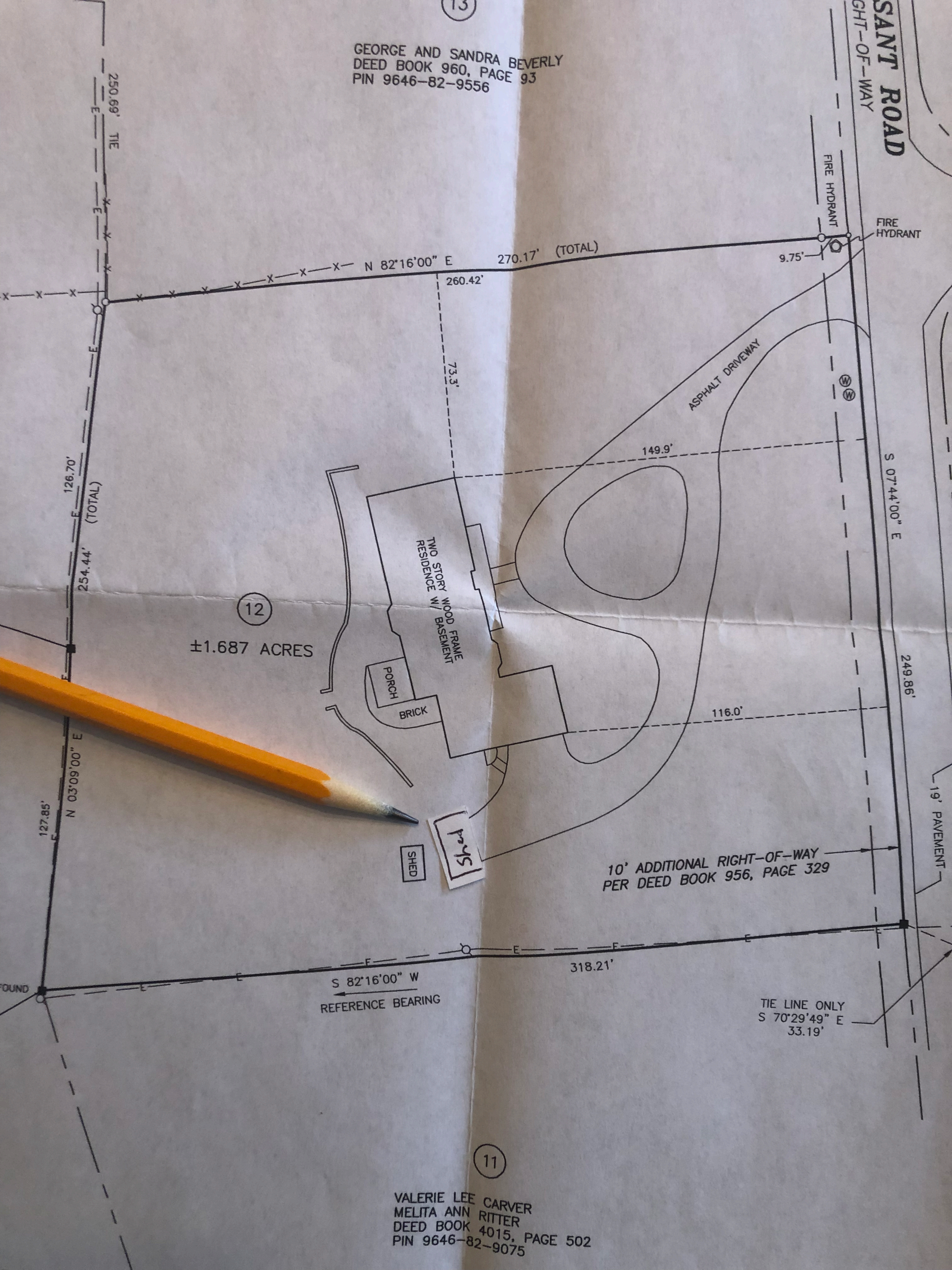
A handwritten signature in black ink, appearing to be 'O.E. Starnes IV', written over a horizontal line.

Date

1/4/2022

13
GEORGE AND SANDRA BEVERLY
DEED BOOK 960, PAGE 93
PIN 9646-82-9556

SANT ROAD
RIGHT-OF-WAY



TIE LINE ONLY
S 70°29'49" E
33.19'

11
VALERIE LEE CARVER
MELITA ANN RITTER
DEED BOOK 4015, PAGE 502
PIN 9646-82-9075

BOARD OF ADJUSTMENT STAFF MEMORANDUM

January 24, 2022



Case 3 – 33 Hilltop Road Special Use Request for Retaining Wall in Side Yard and Approval for Tree Removal and Replacement Plan

Property Owner: Lorrie Pande
Property Address: 33 Hilltop Road

Project Description

The applicant has requested a special use permit for a retaining wall within the side yard and additional tree removals and replacement. This project previously received a zoning permit following Design Review Board approval in December 2019. The project was started but not completed by the contractor. The zoning permit issued in December 2019 has expired.

The new contractor has re-evaluated the building design and developed a new grading and landscape plan. These new plans, specifically the retaining wall, require a special use permit by the Board of Adjustment. In addition, the new grading plan also requires additional tree removal and associated replacement that must be approved by the Board of Adjustment.

Special Use Request

The Town requires a special use permit approval for accessory structures, including retaining walls. The pertinent section of the Town Zoning Ordinance states the following:

§ 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.

Tree Removal and Replacement Plan

The applicant proposes the removal of thirteen (13) protected trees, as defined by the Town's Tree Protection Ordinance. The ordinance requires any removal between 11 and 30 trees be considered for approval by the Board of Adjustment as noted below. The proposed replacement plan complies with the tree replacement schedule in 93.38.

§ 93.33 APPLICATIONS FOR REMOVAL OF PROTECTED TREES IN EXCESS OF TEN.

(A) An application for a permit to remove more than ten protected trees on a property must be presented directly to the Board of Adjustment. A fee of \$50.00 shall accompany the application.

The applicant has provided a replacement tree calculator that matches the Town's requirements found in Section 93.38 below.

§ 93.38 REPLACEMENT OF TREES.

(A) Any protected or unprotected tree removed shall be replaced in that general area of the property within 50 feet of the trunk of the former tree as follows:

<i>Minimum size of existing tree</i>	<i>Replacement of protected tree</i>	<i>Replacement of unprotected tree</i>
6-12" DBH	2 trees	1 tree
13-18" DBH	3 trees	1 tree
19-30" DBH	4 trees	2 trees
30" DBH or greater	5 trees	3 trees

(B) Any replacement tree shall be in the ground within six months of removal of the original tree. The Town Manager or Board of Adjustment may, for good cause shown, and in their sole discretion, extend this period for up to six months.

(C) Subject to the approval of the Town Manager or the Board of Adjustment, replacement tree(s) may be planted in advance of any tree removal.

(D) The minimum size for replacement is two inches diameter (measured from one foot above ground level) for a large-maturing deciduous tree, and one and one-half inch diameter for a small-maturing deciduous tree, or eight feet in height for evergreens. Additionally, the replanted trees shall meet the plant specifications of the Town Zoning Ordinance in § 153.070.

(E) Depending on the proximity of other trees and/or structures, lesser quantities of replacement trees may be authorized by the Town Manager or by the Board of Adjustment (in the case of an appeal from the town) or the Town Manager may authorize the replanting or replacement of trees in a location or locations where such replacement trees are more likely to survive.

Zoning Compliance Application

Town of Biltmore Forest

Name

Clinton Witteveen

Property Address

33 Hilltop Rd

Phone

(720) 250-3041

Email

clinton@falconbuilt.com

Parcel ID/PIN Number

964675937100000

ZONING INFORMATION

Current Zoning

R-1

Lot Size

1.28 acres

Maximum Roof Coverage

5,500 square feet (Up to 1.5 acres)

Proposed Roof Coverage Total

5500

Maximum Impervious Surface Coverage

1-3 acres (25 percent of lot area)

Proposed Impervious Surface Coverage

5500

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

24'

Description of the Proposed Project

Additions to the existing structure were started and abandoned by a previous contractor.

Work will include completing the additions to the structure, as well as renovations to the existing structure. Site work consists of tree removal, grading, and a retaining wall. Site plans indicate tree removal and replacement schedule. Design has changed to reduce the size of the retaining needed by lowering the overall grade of the site. Retaining wall will not encroach on the easement.

Estimated Start Date

1/31/2022

Estimated Completion Date

3/31/2023

Estimated Cost of Project

\$1,000,000.00

Supporting Documentation (Site Plan, Drawings, Other Information)

33 Hiltop - Pande Residence - Architectural Drawings.pdf

33 Hiltop - Pande Residence - Site Conceptual Plan.pdf

Applicant Signature

Date
1/4/2022

A handwritten signature in black ink, consisting of a large 'C' followed by a series of loops and a final upward stroke, positioned above a horizontal line.

Special Use Permit Application

Town of Biltmore Forest

Name

Clinton Witteveen

Address

33 Hilltop Rd

Phone

(720) 252-3041

Email

clinton@falconbuilt.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:

Proposal for the Pande Residence located at 33 Hilltop Road.

We are requesting a special use permit to construct a retaining wall on the property, near the garage.

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

The retaining walls are adjacent to the house and greater than 60' from the front of the property. They present no adverse affect to public health

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

Signature

Date

1/4/2022



Section 93.38. Replacement of Trees

Any Protected or Unprotected Tree removed shall be replaced in that general area of the property as follows:

Minimum Size of Existing Tree	Replacement of Protected Tree	Replacement of Un-Protected Tree
6-12" DBH	2 trees	1 tree
13-18" DBH	3 trees	1 tree
19-30" DBH	4 trees	2 trees
30" DBH or greater	5 trees	3 trees

Any replacement tree shall be in the ground within eighteen (18) months of removal of the original trees.

The minimum size for replacement is two (2) inches diameter (measured from one foot above ground level) or eight (8) feet in height for evergreens. Additionally, the replanted trees shall meet the plant specifications of the Town Zoning Ordinance Section 153.070.

Depending on extenuating circumstances related to proximity of other trees and/or structures, lesser quantities of replacement trees may be authorized by the Town Manager or by the Board of Adjustment (in the case of an appeal from the Town) or the Town Manager may authorize the replanting or replacement of trees in a location or locations where such replacement trees are more likely to survive.

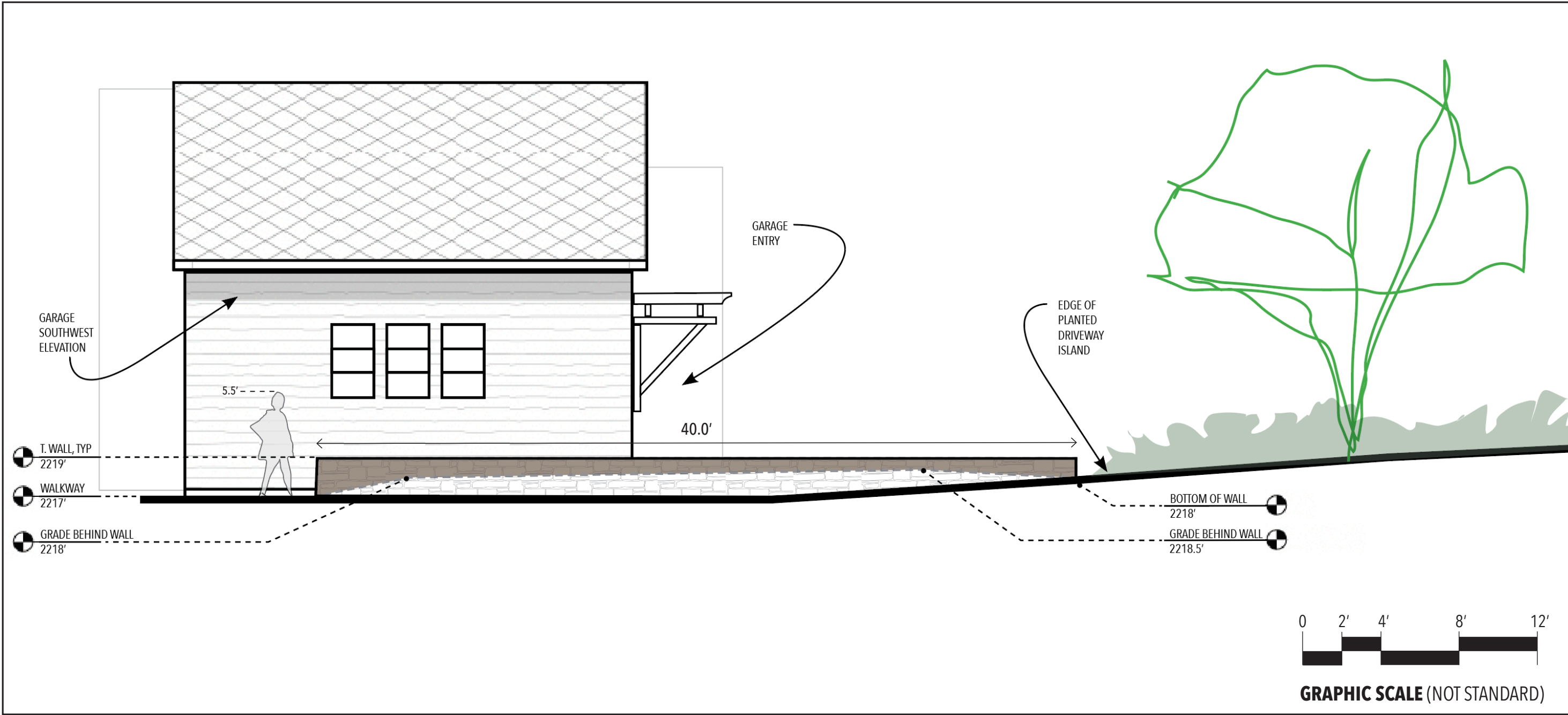
REPLACEMENT TREE CALCULATION

Existing Tree Size in DBH (Diameter at Breast Height)	Qty of trees to be removed	New trees required per removal	Total new trees required
6-12" DBH	9	2	18
13-18" DBH	3	3	9
19-30" DBH	0	4	0
30" DBH +	1	5	5
Totals	13		32

REPLACEMENT TREE TABLE

KEY	Botanical Name	Common Name	Qty	Mature Height	Mature Width	Install Size	Sun	Colors	Native	Description
AR	<i>Acer rubrum 'Red Sunset'</i>	Red Maple	2	40'	30'	2" cal	Full Sun-Part Shade	Red leaf buds/green/bright red fall foliage	improved native	Strong oval canopy form, very hardy, brilliant red fall color, leaves persist for weeks longer than other maples, thrives in moist conditions.
AG	<i>Amelanchier grandiflora 'Robin Hill'</i>	Robin Hill Serviceberry	18	15'	10-15'	2" cal	Full Sun-Part Shade	Pink to white spring flowers, edible red-black berry in summer, brilliant yellow to red fall foliage	improved native	Very early spring apple-blossom-like flowers, larger blossoms than other species, drought and wet tolerant. Summer fruit is very attractive to birds.
CF	<i>Cornus florida</i>	White Flowering Dogwood	3	20'	20'	2" cal	Part Shade	White blossoms, green leaves	native	Showy flowers on horizontal branches before leaves emerge in spring. Horizontal form.
IN	<i>Ilex x 'Nellie Stevens'</i>	Nellie Stevens Holly	3	15'	10'	7-8'	Full Sun-Part Shade	Glossy dark green evergreen leaves, long-lasting red berries in fall to winter	no (hybrid of I. aquifolium and I. cornuta)	Dense pyramidal evergreen tree, grows well in part shade acidic woodland conditions, drought tolerant. Fruits without a male pollinator. Mildly resistant to deer browse.
PS	<i>Prunus subhirtella 'Autumnalis'</i>	Higan Cherry Tree	6	25'	20'	2" cal	Full Sun-Part Shade	Heavy bloom set of semi-double pink flowers in spring with another (sparse) bloom in fall	no	Upright rounded deciduous tree. Better tolerance for summer heat and winter cold than most of the flowering cherries. Pea-sized summer fruit is attractive to birds.
		Total Tree Qty:	32							

GARAGE RETAINING WALL SECTION/ELEVATION



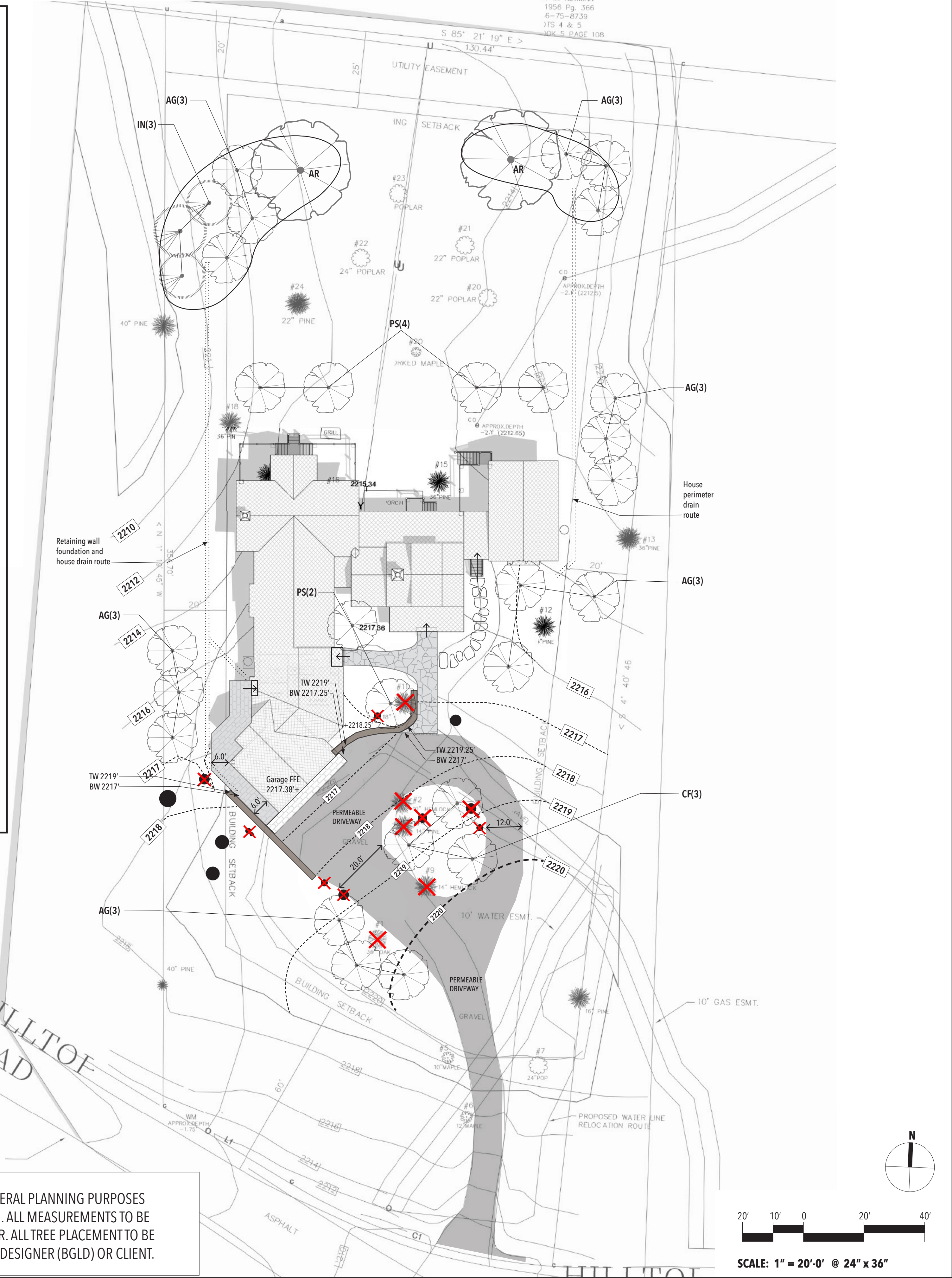
LEGEND

- Existing Tree (not included in survey)
- Proposed Tree Takedown
- Existing Contour
- Proposed Contour
- Driveway (Permeable Pavers or Gravel)
- Garage Apron
- Proposed Walkways
 - Permeable Pavers
 - Flagging
 - Stepping stone
- Proposed Stacked Stone Retaining Wall

- Proposed Replacement Tree (Deciduous)
- Proposed Replacement Tree (Evergreen)

All else included in Esposito Design document, "Architectural Site Plan, A010, SITE PLAN - PHASE 2"

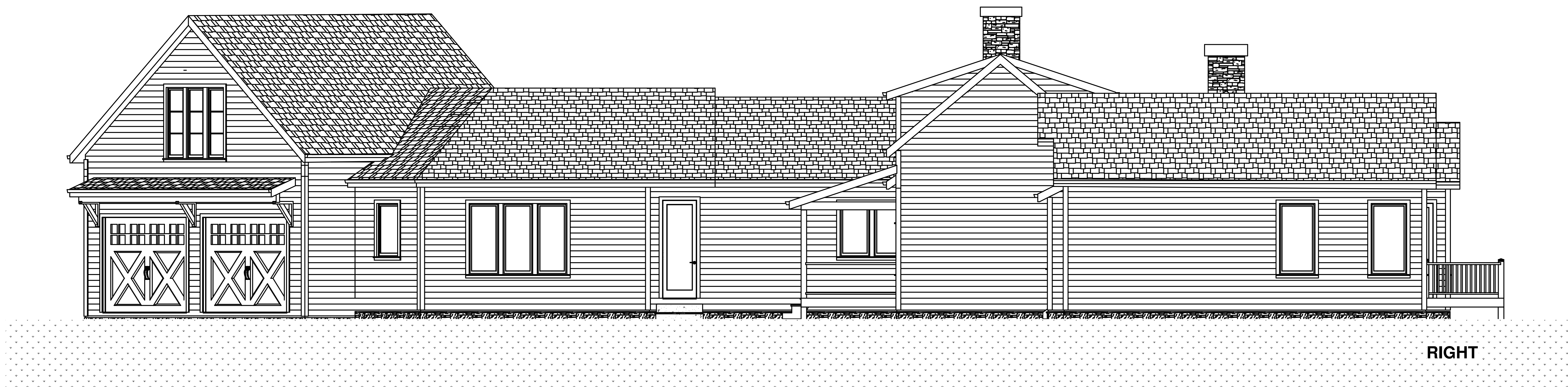
CONCEPTUAL DESIGN FOR GENERAL PLANNING PURPOSES ONLY, NOT FOR CONSTRUCTION. ALL MEASUREMENTS TO BE FIELD VERIFIED BY CONTRACTOR. ALL TREE PLACEMENT TO BE FIELD VERIFIED BY LANDSCAPE DESIGNER (BGD) OR CLIENT.





To the best of my knowledge these plans are drawn to comply with owner's and/or builder's specifications and any changes made on them after prints are made will be done at the owner's and/or builder's expense and responsibility. The contractor shall verify all dimensions and enclosed drawing. Chuck Snyder/Design by Snyder is not liable for errors once construction has begun. While every effort has been made in the preparation of this plan to avoid mistakes, the maker can not guarantee against human error. The contractor of the job must check all dimensions and other details prior to construction and be solely responsible thereafter.

1/4" SCALE



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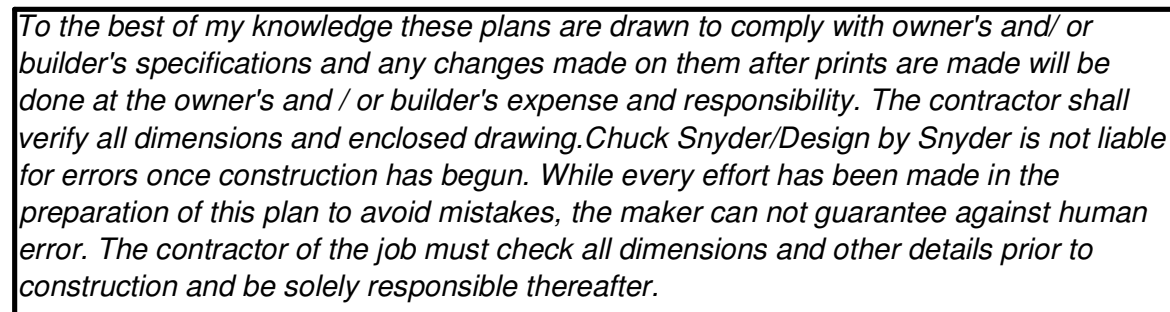
1/4" SCALE

12/30/2020

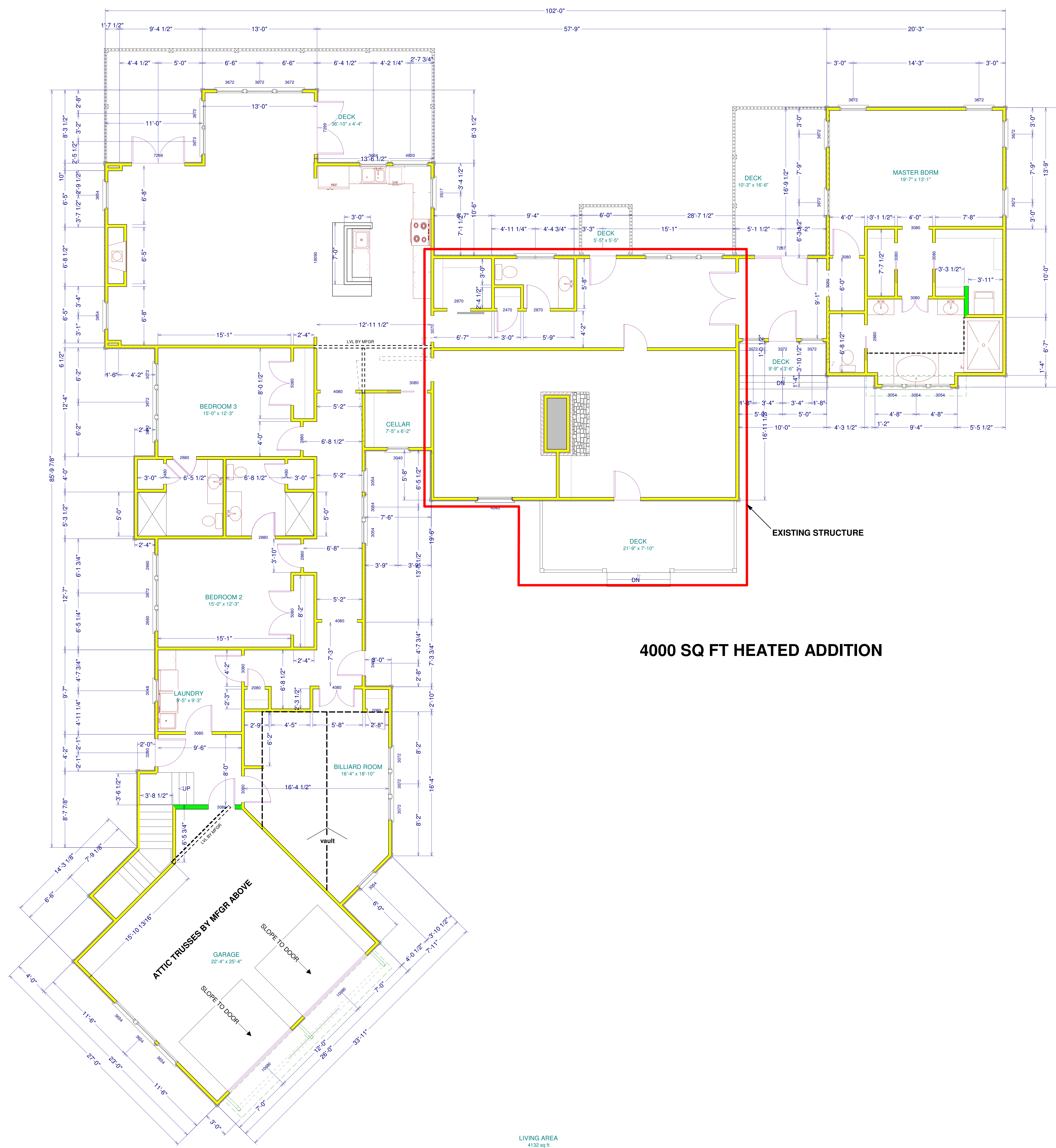
PANDE

Design By Snyder
Asheville, NC
828-779-5669

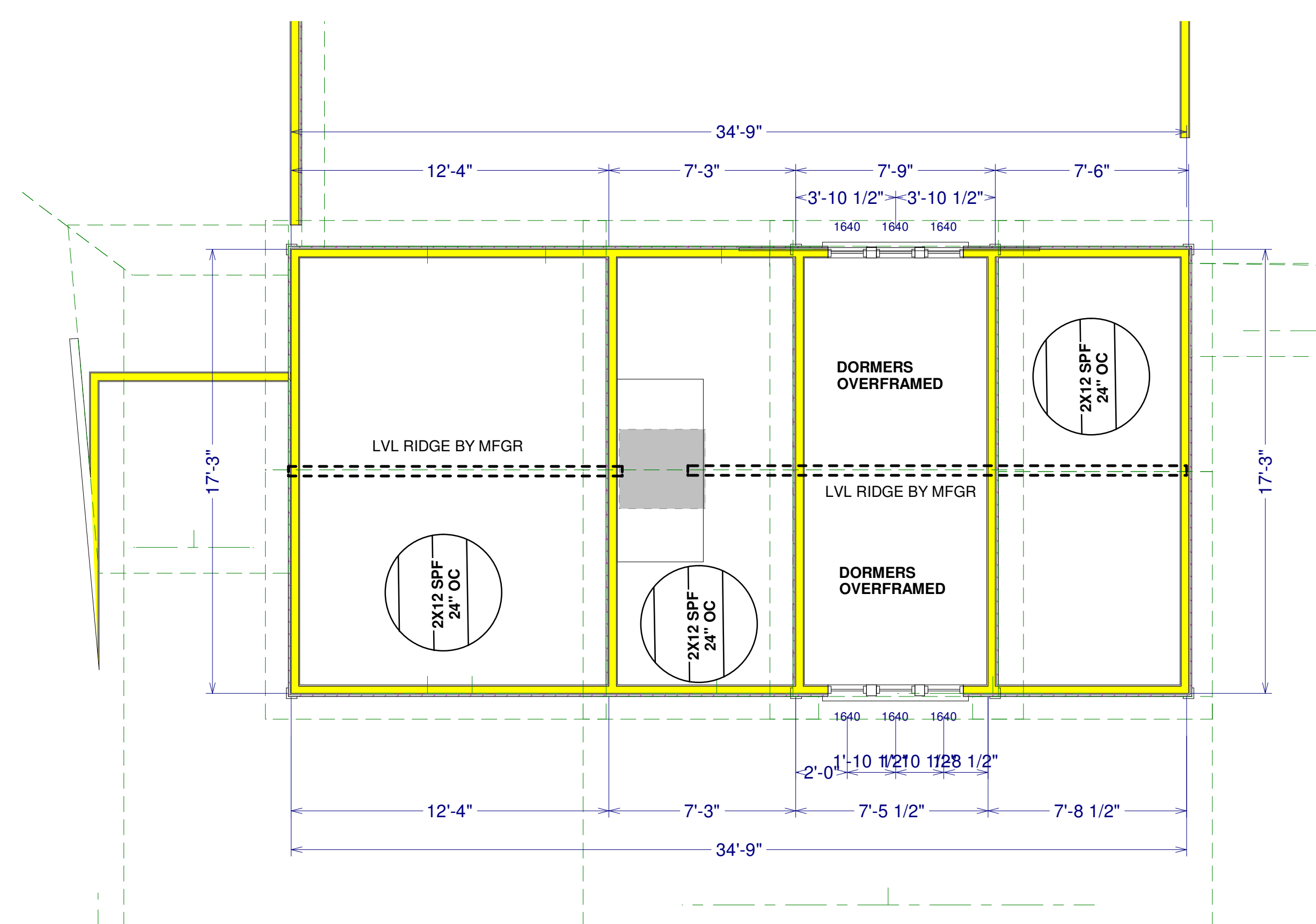




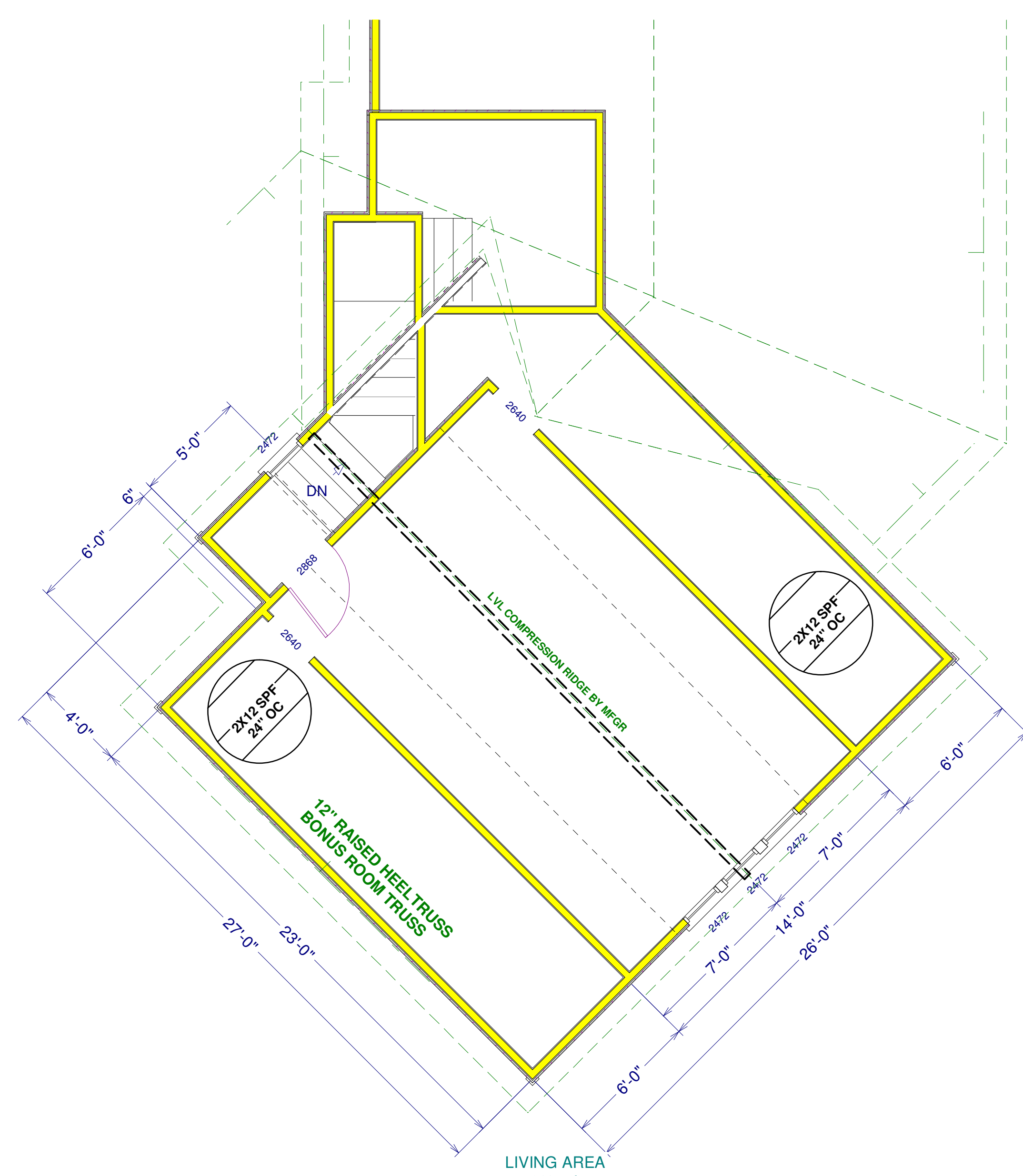
12/30/2020



4000 SQ FT HEATED ADDITION



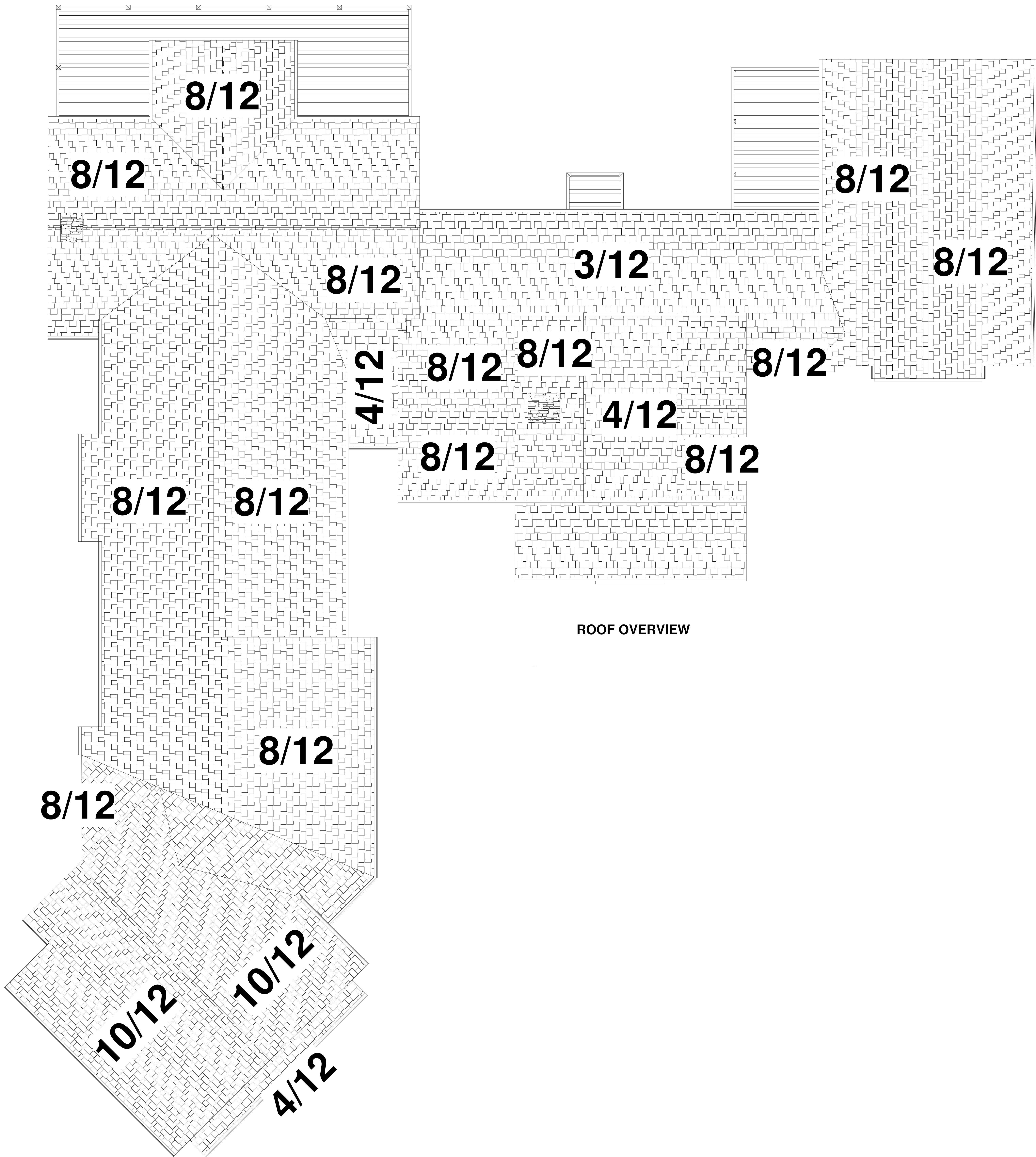
NEW ROOF OVER EXISTING



GARAGE BONUS ROOM

1/4" SCALE

To the best of my knowledge these plans are drawn to comply with owner's and/ or builder's specifications and any changes made on them after prints are made will be done at the owner's and / or builder's expense and responsibility. The contractor shall verify all dimensions and enclosed drawing. Chuck Snyder/Design by Snyder is not liable for errors once construction has begun. While every effort has been made in the preparation of this plan to avoid mistakes, the maker can not guarantee against human error. The contractor of the job must check all dimensions and other details prior to construction and be solely responsible thereafter.



To the best of my knowledge these plans are drawn to comply with owner's and/or builder's specifications and any changes made on them after prints are made will be done at the owner's and/or builder's expense and responsibility. The contractor shall verify all dimensions and enclosed drawing. Chuck Snyder/Design by Snyder is not liable for errors once construction has begun. While every effort has been made in the preparation of this plan to avoid mistakes, the maker can not guarantee against human error. The contractor of the job must check all dimensions and other details prior to construction and be solely responsible thereafter.

1/4" SCALE

BOARD OF ADJUSTMENT STAFF MEMORANDUM

January 24, 2022



Case 4 – 35 Hilltop Road Special Use Request for Stone Walls in Front Yard and Boulder Retaining Wall in Side Yard Variance Request for Stone Walls in Front Yard Setback

Property Owner: Mark Gordon
Property Address: 35 Hilltop Road

Project Description

The applicant requests a special use permit for the installation of stone garden walls within the front yard. An additional request is for a special use permit for the installation of a boulder retaining wall in the side yard. The stone garden walls proposed for the front yard are 36" high. Please note: a natural gas fire pit shown on the attached site plan IS NOT proposed for installation.

Special Use Permit Requests

Each proposed wall (boulder wall in side yard and garden wall in the front) requires a special use permit as noted within the Town's Zoning Ordinance regarding new walls below.

§ 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.

Variance Request

A variance is required for installation of the stone garden walls. This is due to their location within the front yard setback. The applicant has provided information relative to the application proposal and rationale for this request.

Zoning Compliance Application

Town of Biltmore Forest

Name

Steven Lee Johnson

Property Address

35 Hilltop Rd

Phone

(828) 225-4945

Email

sljohnson@siteworkstudios.com

Parcel ID/PIN Number

9646-75-7396

ZONING INFORMATION

Current Zoning

R-1

Lot Size

1.21

Maximum Roof Coverage

5,060 square feet (Up to 1.2 acres)

Proposed Roof Coverage Total

0

Maximum Impervious Surface Coverage

1-3 acres (25 percent of lot area)

Proposed Impervious Surface Coverage

+/- 2890 sf exist (+ 240 sf proposed)

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

existing. (no change)

Description of the Proposed Project

This existing residence scope of work entails driveway enhancements to remedy a lack of adequate room for proper vehicle maneuverability as well as hardscape enhancements which include the addition of stone garden walls at each existing entry of the driveway and a boulder wall to retain soil for the back up space from the garage. The project will also include landscape renovation including the addition of plants to enhance the current pallet of plantings.

Estimated Start Date

2/1/2022

Estimated Completion Date

2/28/2022

Estimated Cost of Project

\$38,000.00

Supporting Documentation (Site Plan, Drawings, Other Information)

35 Hilltop Rd_Site Plan.pdf

Applicant Signature

A handwritten signature in black ink, appearing to be 'Shun', written over a horizontal line.

Date

12/21/2021

Special Use Permit Application

Town of Biltmore Forest

Name

Steven Lee Johnson

Address

35 Hilltop Rd

Phone

(828) 225-4945

Email

sljohnson@siteworkstudios.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:

This existing residence scope of work entails driveway enhancements to remedy a lack of adequate room for proper vehicle maneuverability as well as hardscape enhancements which include the addition of stone garden walls at each existing entry of the driveway.

(A 36" HT. Freestanding masonry garden wall and a <48" HT. stone retaining wall at Garage)

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

The addition of the low stone garden walls will bring the architectural aesthetic of the residence into the front garden/entry and soften the appearance of the residence from the street. The stone garden walls will match the stone on the existing residence

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

Signature

Date

12/20/2021



VARIANCE APPLICATION

Town of Biltmore Forest

Name

Steven Lee Johnson

Address

35 Hilltop Road

Phone

(182) 822-5494 x5

Email

sljohnson@siteworkstudios.com

Current Zoning/Use

R

Requested Use

garden wall construction

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?

Our client, Mark Gordon, wishes to develop a lush garden at their home. This includes new landscape and hardscape that ties the landscape to the architecture and defines the space, and overall improves the appearance of the home.

What does the ordinance require?

Walls are to be located in the rear yard.

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.**

The desire is to create an enhanced, new garden. The existing home is already set at the 60' front setback. The rear yard is very steep and would require extensive retaining walls/site disturbance to achieve the desired garden area.

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

The home is sited at the 60' front setback due to the original step slope on the lot. This creates a level area in front, but step grades in the rear where gardening opportunities and accessibility are limited.

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

The Gordons purchased the home from the original owners. The home is a couple of years old.

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.

The proposed 36" garden wall would properly define the new garden area. The garden wall would also

extend the home's architecture into the landscape by utilizing the same stone as used on the residence. In addition, the garden wall would enhance the view of the property from the street by mitigating views of cars parked in the front motor court.

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

Signature

Date

1/12/2022

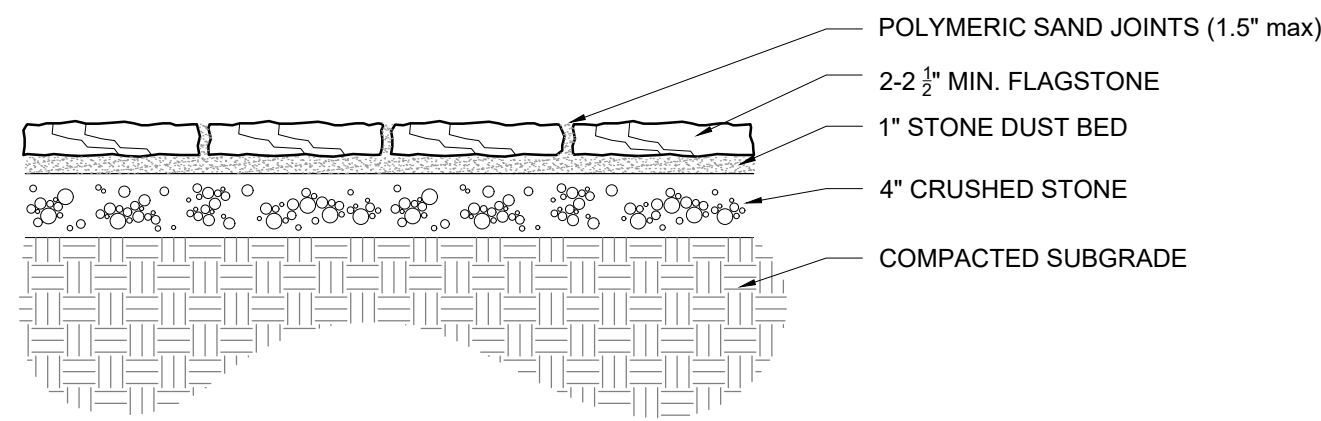
Starr Lee Jones



BILTMORE FOREST, NC 28803

SHEET NO.
L-200





1 FLAGSTONE PAVING
NTS

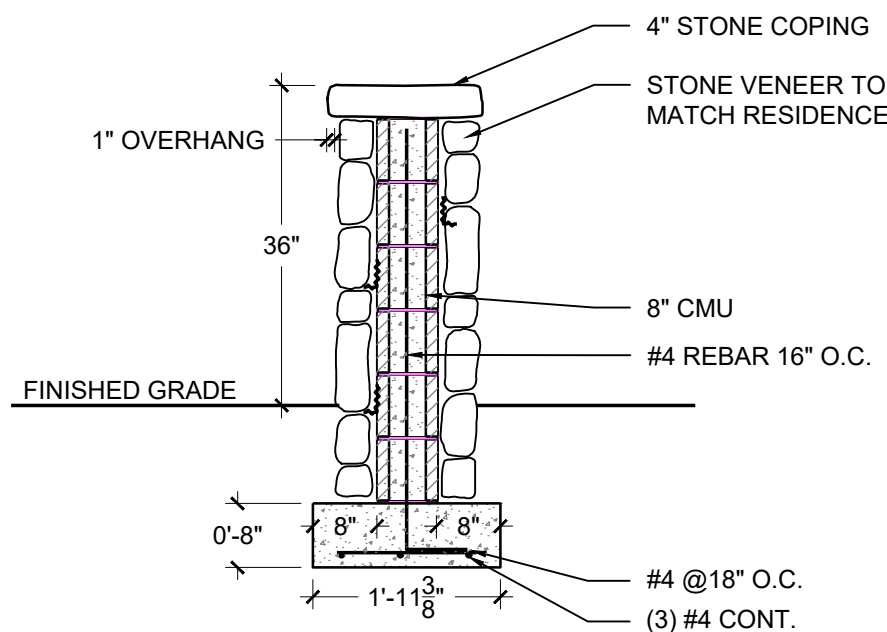


Glencoe 42\"/>

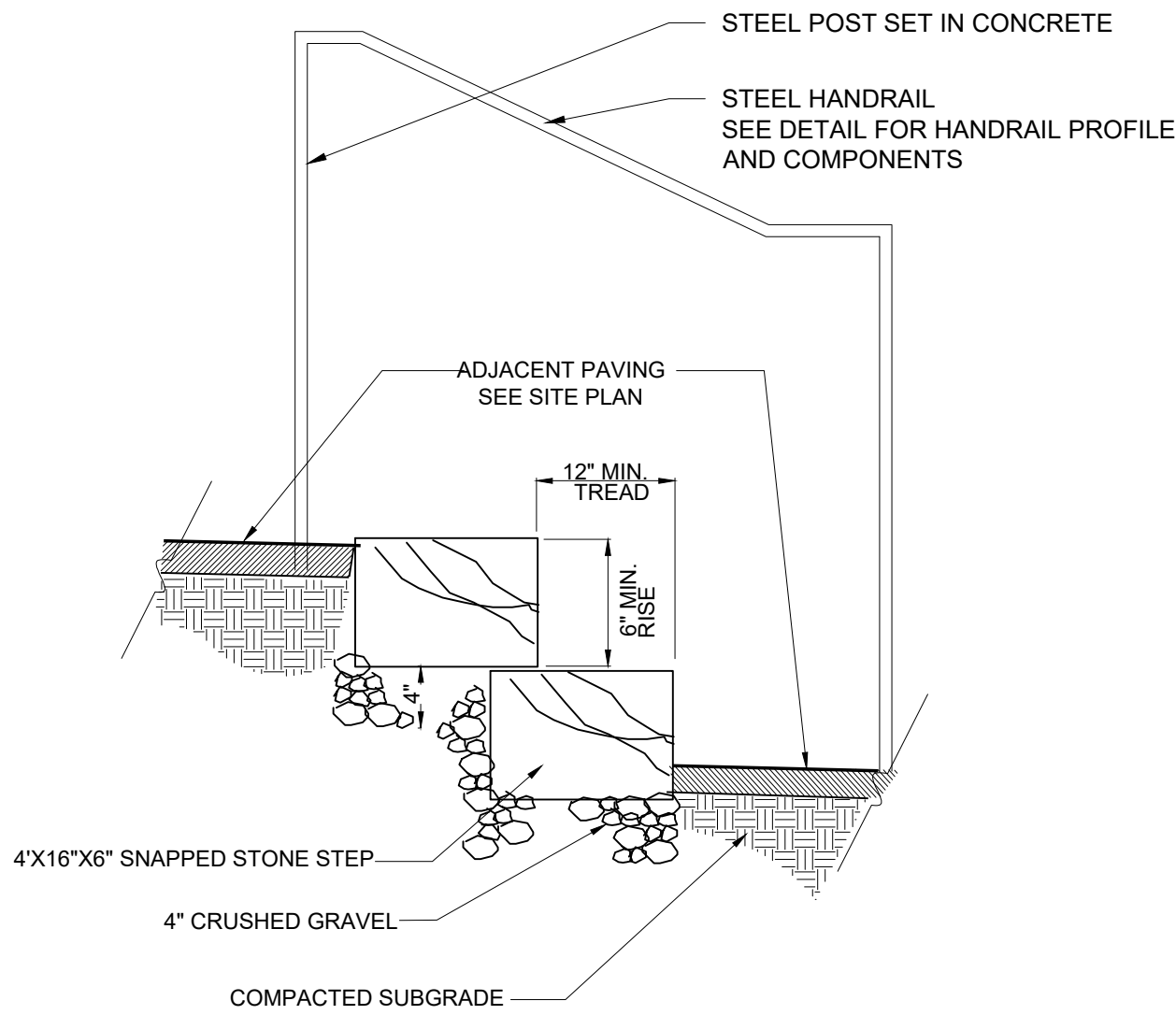
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LONGSHADOW PLANTERS
83 Longshadow Ln, Pomona, IL 62975
(618) 893-4831

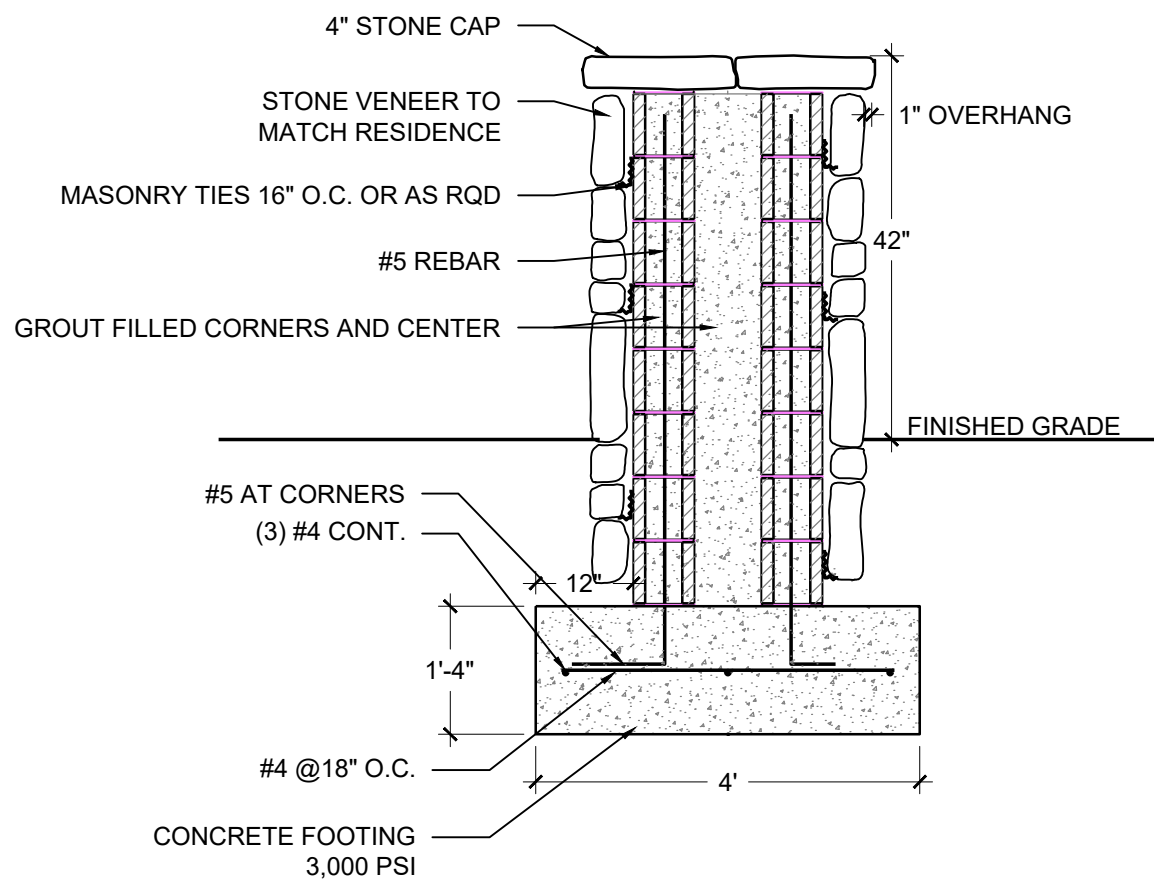
4 'GLENCOE' 42\"/>



7 STONE WALL - SECTION
NTS



2 SNAPPED STONE STEPS
NTS



8 STONE PIER SECTION
NTS



HANDRAIL POST: 1-1/2\"/>



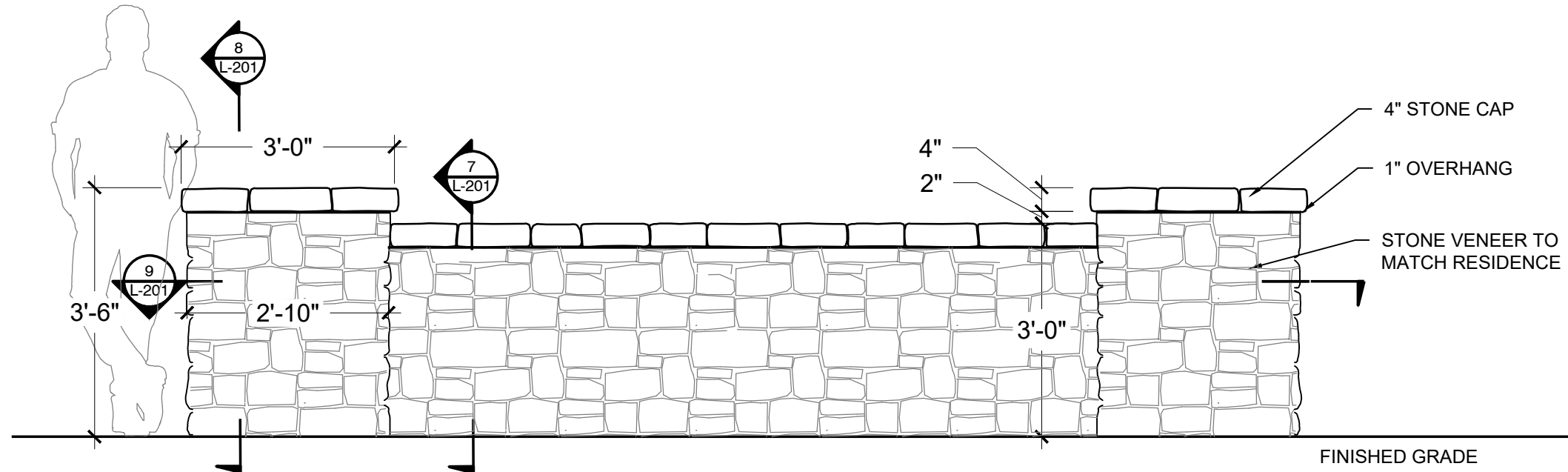
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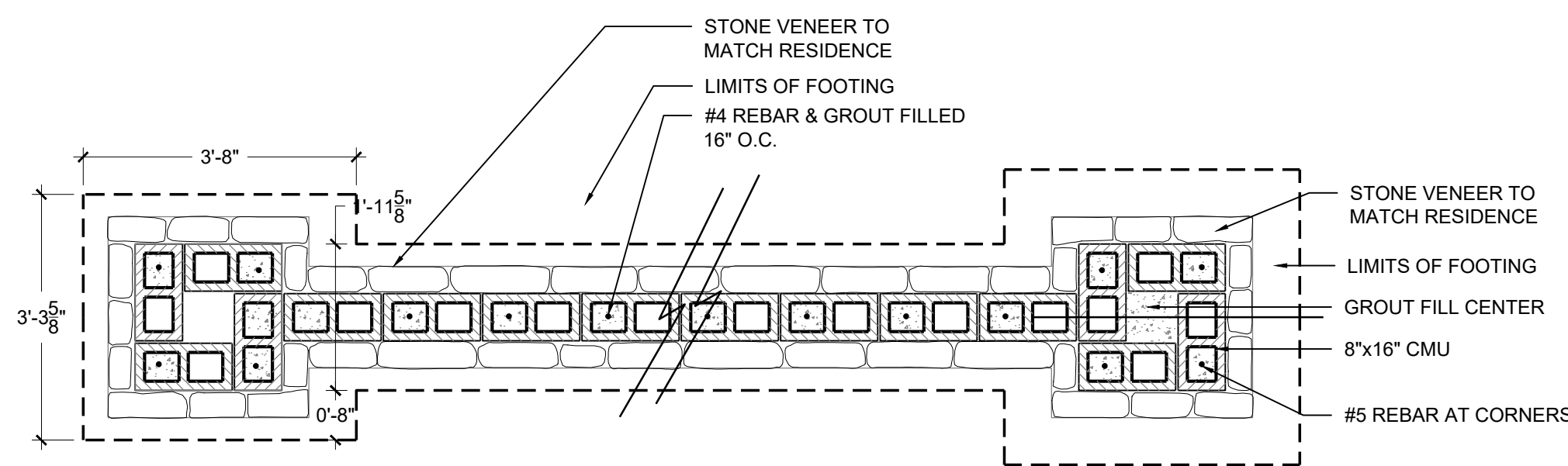
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KING ARCHITECTURAL METALS
LOS ANGELES • DALLAS • BALTIMORE 1-800-542-2379

STEEL HANDRAIL COMPONENTS



6 STONE WALL ELEVATION
NTS



9 WALL & PIER SECTION
NTS

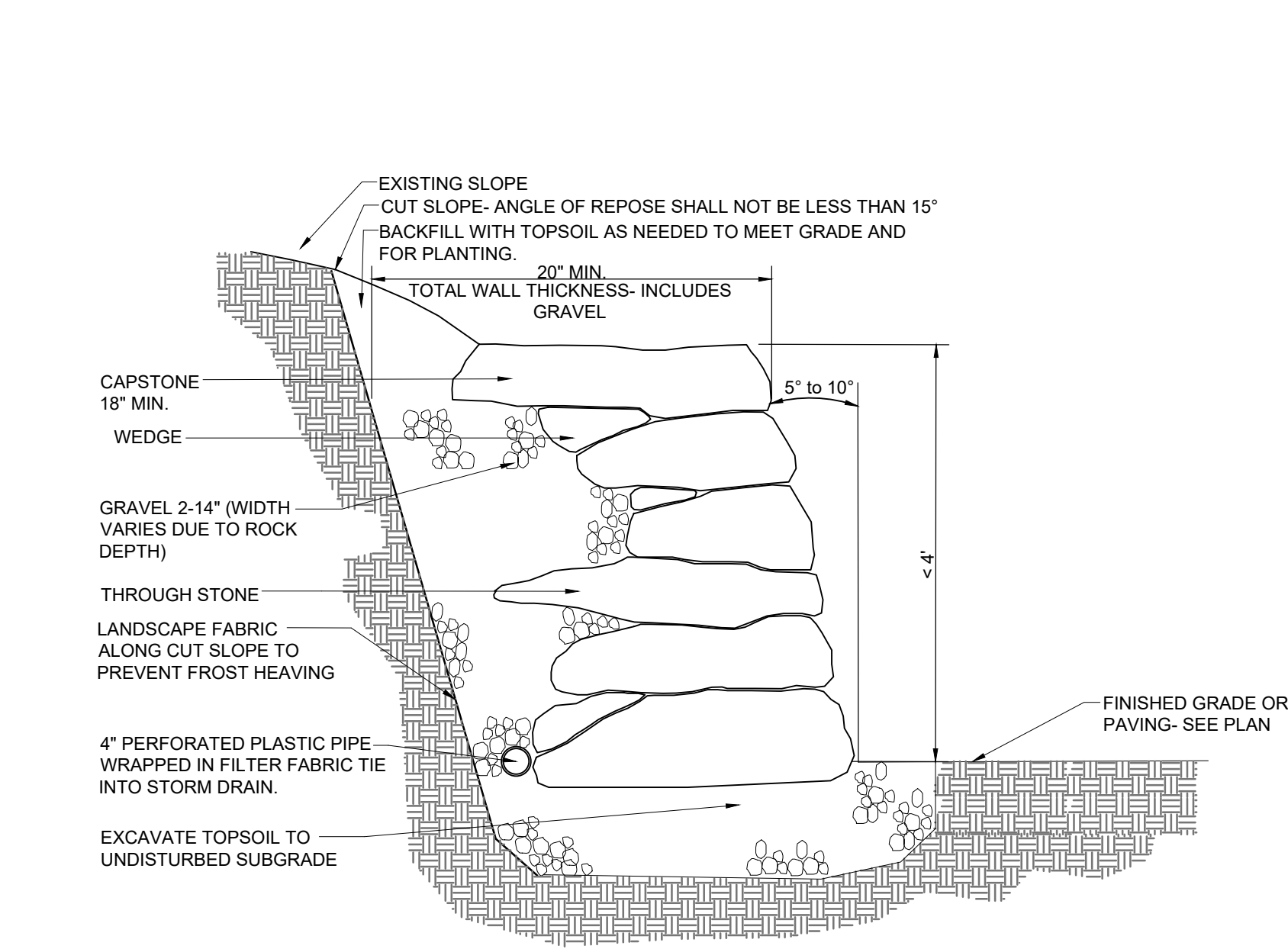
REVISIONS		
NO.	REMARKS	DATE



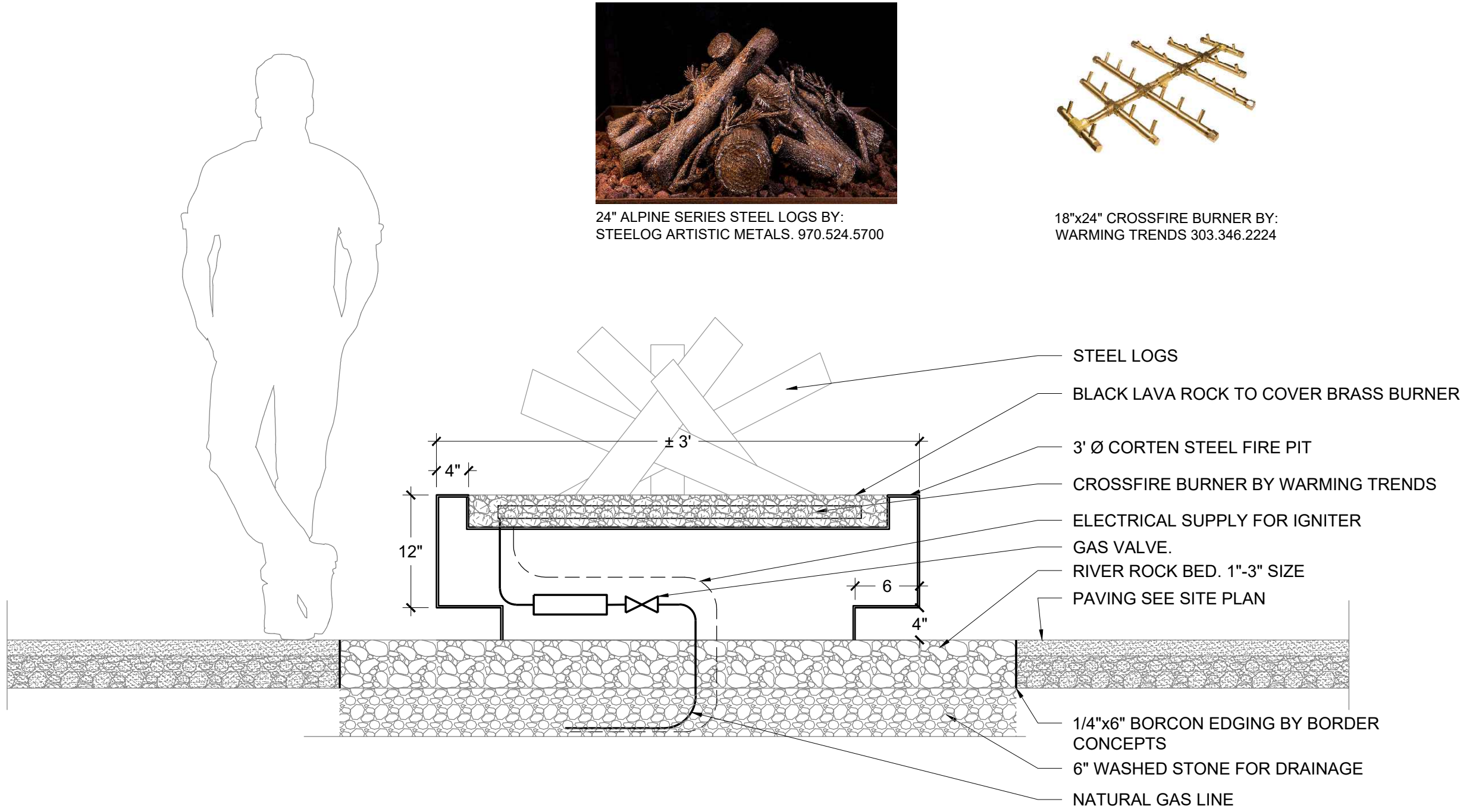
DATE:
12.20.2021
SHEET TITLE:

DETAILS

SHEET NO.
L-201



1 BOULDER RETAINING WALL
NTS



2 NATURAL GAS FIRE PIT
NTS



3 PROPOSED STONE WALLS AND ENHANCED LANDSCAPING
NTS



siteworkSTUDIOS

LANDSCAPE ARCHITECTURE
352 Dupont Street | Suite 120 | Asheville, NC 28801 | 828.225.4945

CONSULTANT

GORDON RESIDENCE

PREPARED FOR:
35 HILLTOP ROAD
BILTMORE FOREST, NC 28803

NO.	REVISIONS	REMARKS	DATE

NOT FOR CONSTRUCTION

C-188

DATE:
12.20.2021

SHEET TITLE:
DETAILS

SHEET NO.
L-202

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