



To: Members of the Board of Adjustment, Applicants & Neighboring Property Owners  
From: Jonathan B. Kanipe, Town Manager  
Date: May 5, 2022  
Re: **Board of Adjustment Meeting – May 16, 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.

### Neighbors:

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

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

You are invited to attend the scheduled meeting at the Town Hall and make comment when called upon. Any additional information regarding the meeting will be provided on the Town's website no later than May 12, 2022.

## PROPOSED AGENDA

**The following items of business will be considered by the Biltmore Forest Board of Adjustment on Monday, May 16, 2022 at 4:00 pm at the Biltmore Forest Town Hall.**

1. The meeting will be called to order and roll call taken.
2. The minutes of the April 18, 2022 regular meeting will be considered.
3. Hearing of Cases (Evidentiary Hearings, Deliberations & Determinations).

**Case 1: 30 Ridgefield Place** – Special Use Permit request for Accessory Structure (Installation of Patio & Fire Pit in Rear Yard)

**Case 2: 46 Hilltop Road** – Request for Removal of Twenty-Seven (27) Protected Trees per Town Tree Protection Ordinance

**Case 3: 120 Stuyvesant Road** – Special Use Permit request for Accessory Structures in Side Yard (Retaining Wall and Gate)

**Case 4: 28 Forest Road** – Variance and Special Use Permit Request for Accessory Structure (Fence) to be Located within Rear and Side Yard Setback

4. Adjourn

\*\*\*ZOOM INSTRUCTIONS\*\*\*

For those interested in viewing the meeting via Zoom, please use the instructions on the following page.

Town of Biltmore Forest is inviting you to a scheduled Zoom meeting.

Join Zoom Meeting

<https://us02web.zoom.us/j/87994319568?pwd=TmVRelZxWXQ2S3NNV0U2NHNrbFIVZz09>

Meeting ID: 879 9431 9568

Passcode: 346248

One tap mobile

+13017158592,,87994319568#,,,,\*346248# US (Washington DC)

+13126266799,,87994319568#,,,,\*346248# US (Chicago)

Dial by your location

+1 301 715 8592 US (Washington DC)

+1 312 626 6799 US (Chicago)

+1 646 876 9923 US (New York)

+1 253 215 8782 US (Tacoma)

+1 346 248 7799 US (Houston)

+1 408 638 0968 US (San Jose)

+1 669 900 6833 US (San Jose)

Meeting ID: 879 9431 9568

Passcode: 346248

Find your local number: <https://us02web.zoom.us/j/87994319568?pwd=TmVRelZxWXQ2S3NNV0U2NHNrbFIVZz09>

MINUTES OF THE BOARD OF ADJUSTMENT MEETING  
HELD MONDAY, APRIL 18, 2022

The Board of Adjustment met at 4:00 p.m. on Monday, April 18, 2022.

Members present: Mr. Greg Goosmann, Mr. Robert Chandler, Mr. Lowell Pearlman, Ms. Martha Barnes, Ms. Rhoda Groce and Ms. Lynn Kieffer were present. Mr. Jonathan Kanipe, Town Manager and Mr. William Clarke, Town Attorney were also present.

Chairman Greg Goosmann called the meeting to order at 4:05 p.m.

Mr. Goosmann swore in the following:

Mr. Jonathan Kanipe

Mr. Phil Hardin

Ms. Lila Hardin

A motion was made by Mr. Robert Chandler to approve the minutes from February 21, 2022. Ms. Lynn Kieffer seconded the motion. Roll call was taken, and the minutes were unanimously approved.

HEARING (Evidentiary):

A Special Use Permit request and variance for an accessory structure (installation of landscaping boulders) at 12 East Forest Road. Mr. Robert Chandler shepherded the matter. There is an existing slope adjacent to East Forest Road. The Variance is because the boulders will be in the front yard. Mr. Phil Hardin said the structure will be twenty-seven feet in width. There will be curvature at the end of the wall to allow for strength. From the top of the surface of the road, the height will be no less than three feet and no higher than three and a half feet

from the top of the structure. The left side will be less than the right side of the structure in height from the road. The road inclines as it goes north. The type of material used will be high stack boulders from Tennessee which is natural sandstone. The average width of the stone will be between three and four feet. They are approximately two feet high and two feet in depth. There is drainage that will be put in behind the structure itself to allow for water to pass around the sides. They will also add additional shrubbery. Beyond the drain port to the right front of the wall, they would like to extend other boulders that will not be attached to be placed at the lower end of the bank. There will be vegetation behind that and in between the boulders. There will be no mortar or cement used. The Hardins want this project done because there are two Hemlock trees that were diseased and had to be removed. The bottom part of the bank was not supported by the roots of the tree. When the house was built in 1984, the dirt was pushed over and used that disturbed soil for the driveway. It still moves and by having these boulders, it will address this issue. The structure will not be in the right-of-way.

#### DELIBERATION AND DETERMINATION:

Mr. Chandler recited the facts and said Phil and Lila Hardin of 12 East Forest are proposing a Special Use Request for an accessory structure installation of landscape boulders within the front yard setback which also requires a Variance. The purpose of the landscape boulders is to ensure the stability of the steep sloped bank. The dimensions are twenty-five feet with two feet in curvature. It will be three to three and a half feet tall. It will be two feet deep. There are also plans to add shrubbery. It complies with the five-foot setback. No neighboring property owners have objected to the project.

Mr. Lowell Pearlman made a motion for a Special Use Permit and Variance be granted to Phil and Lila Hardin at 12 East Forest Road for stone retaining boulders and the facts as recited by Robert Chandler and his summation be accepted as findings and facts to support this grant. The Board has inspected this site and no neighboring property owner has objected. 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.

The motion was seconded by Ms. Martha Barnes. Roll call was taken and unanimously approved.

Chairman Goosmann adjourned the meeting at 4:15 pm. The next Board of Adjustment meeting is scheduled for Monday, May 16, 2022 at 4:00 pm.

ATTEST:

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Greg Goosmann  
Chairman

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Laura Jacobs  
Town Clerk

**BOARD OF ADJUSTMENT  
STAFF MEMORANDUM**

May 16, 2022



**Case 1 – 30 Ridgefield Place  
Special Use Request for Accessory Structure  
*Installation of Fire Pit within Rear Yard***

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Property Owner: Marti Smye & Lisa Madden  
Property Address: 30 Ridgefield Place

Project Description

The applicant requests a special use permit for the installation of an accessory structure in the rear yard. The accessory structure is a fire pit surrounded by a flagstone patio with a sitting ledge. This project is requested in conjunction with an extension of a porch that does not require Board of Adjustment approval.

Special Use Application

Portions of Section 153.029 of the Town's Zoning Ordinance govern accessory structures. Those specific sections regulating accessory structures 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:

(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.

The proposed fire pit and flagstone patio follow the Town's setback regulations per the submitted site plan. The proposed accessory structures are located behind the home.

# Zoning Compliance Application

Town of Biltmore Forest

**Name**

Chris Michell

**Property Address**

30 Ridgefield Place, Asheville, NC 28803

**Phone**

(828) 708-2850

**Email**

chrism@juddbuilders.net

**Parcel ID/PIN Number**

## ZONING INFORMATION

**Current Zoning**

R-2

**Lot Size**

1/2 acre

**Maximum Roof Coverage**

2,874 square feet (Up to .5 acres)

**Proposed Roof Coverage Total**

0

**Maximum Impervious Surface Coverage**

Up to 1 acre (27.5 percent of lot area)

**Proposed Impervious Surface Coverage**

20x21 feet

**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**

0

**Description of the Proposed Project**

This is a porch extension and outdoor flagstone patio. Patio will include a stone sitting ledge and a gas powered fire pit. I have attached the site plan and project details. There is also a diseased 24" poplar that we would like to remove that could be an issue for the existing home structure

**Estimated Start Date**

5/30/2022

**Estimated Completion Date**

6/30/2022

**Estimated Cost of Project**

\$98,523.00

**Supporting Documentation (Site Plan, Drawings, Other Information)**

30 Ridgefield Pl\_Porch Stairs & Patio\_01.30.2022 (1).pdf

**Applicant Signature**

**Date**  
4/22/2022



A handwritten signature in black ink, appearing to read "C. J. My", written over a horizontal line.

# Special Use Permit Application

Town of Biltmore Forest

**Name**

Chris Michell

**Address**

30 Ridgefield Place, Asheville, NC 28803

**Phone**

(828) 708-2850

**Email**

chrism@juddbuilders.net

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

Accessory Structures

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

**Please provide a description of the proposed project:**

We are extending a porch and adding an outdoor flagstone patio with sitting ledge and gas fire pit

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

The porch and patio are on the backside of the house tucked away in an area that is already free of trees and deterrents. This project is simply to create more outdoor living space for the owners.

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

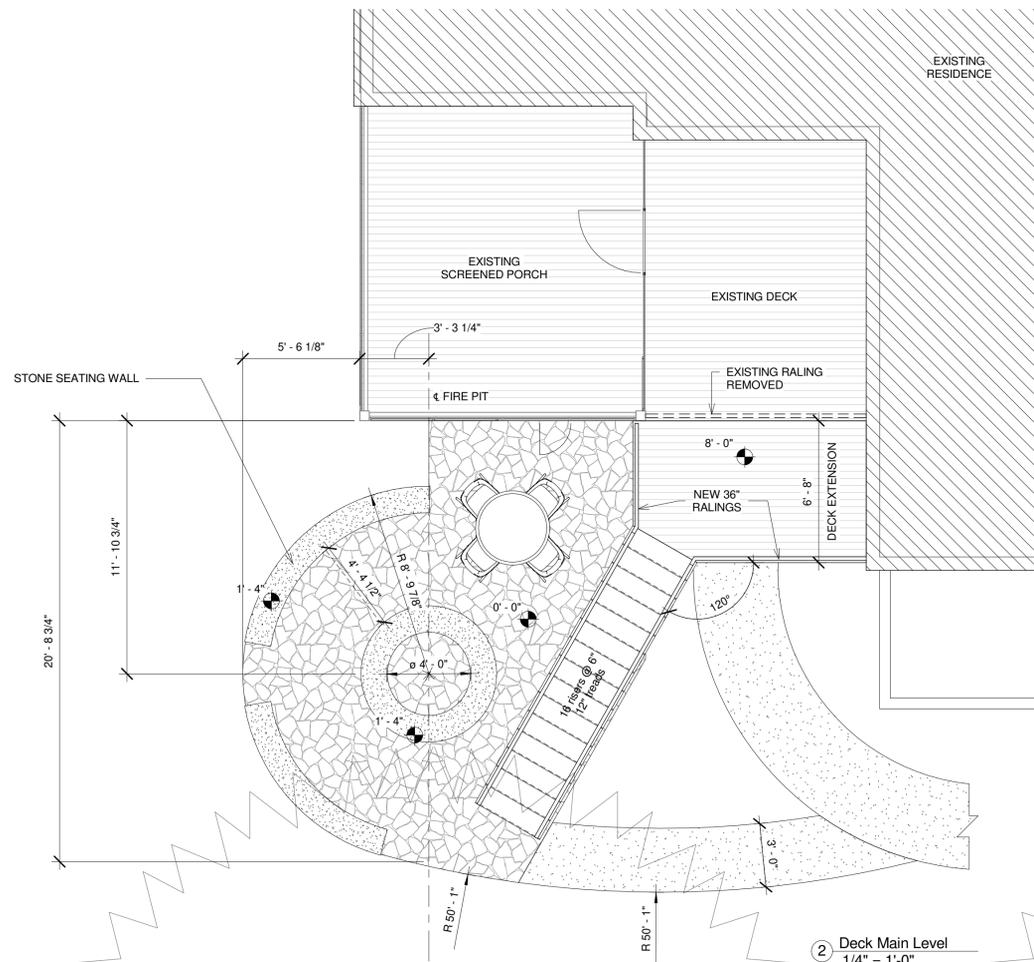
**Signature**

**Date**

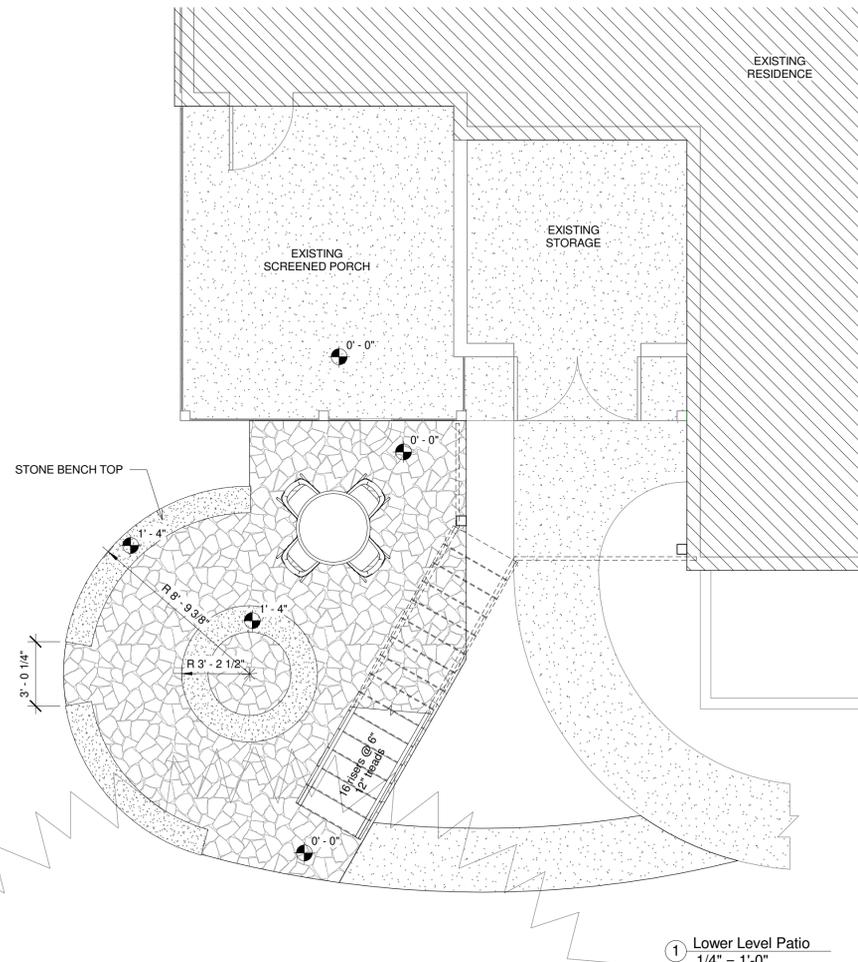
4/22/2022



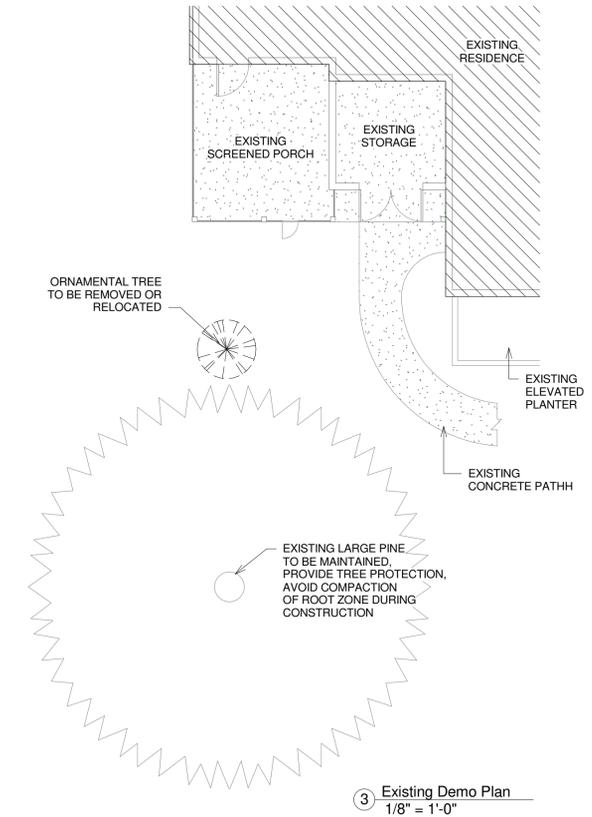
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② Deck Main Level  
1/4" = 1'-0"



① Lower Level Patio  
1/4" = 1'-0"



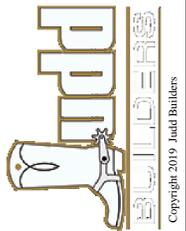
③ Existing Demo Plan  
1/8" = 1'-0"

REVISIONS


ARCHITECT: Michael David Driskill  
64 Mitchell Ave  
Asheville, NC 28806  
855-555-3439  
mdriskill.architect@gmail.com

12/29/2022  
14949  
MICHAEL DAVID DRISKILL  
ARCHITECT  
ASHEVILLE, NC

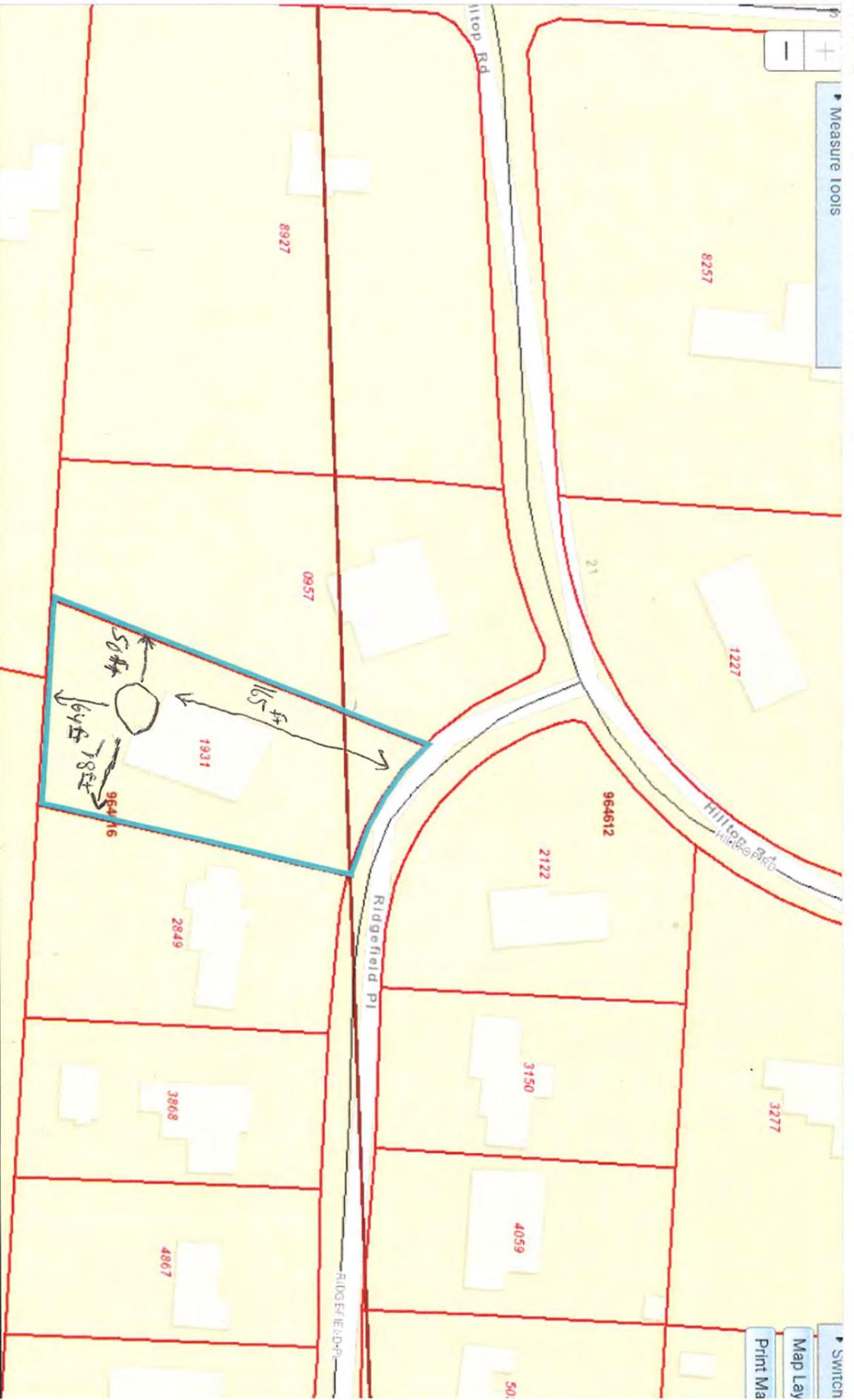
2349 Hendersonville Rd.  
Asheville, NC 28704  
(828) 301-2557



Billmore Forest, NC 28803

Porch Stairs & Patio  
30 Ridgely Place

SHEET TITLE <b>Plan Options</b>	DATE	01/30/2022
	JOB NO.	2021-024
SHEET <b>A101</b>		



**BOARD OF ADJUSTMENT  
STAFF MEMORANDUM**

May 16, 2022



**Case 2 – 46 Hilltop Road  
Request for Removal of Twenty-Seven (27) Protected Trees**

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Property Owner: Jill & John Rose  
Property Address: 46 Hilltop Road

Prior Approval

The applicants received permission from the Board of Adjustment in October 2021 for special use permits associated with the renovation of an existing home. The special use permits granted were for accessory structures (fence, fountain, retaining walls) and the connection of a detached garage connected via breezeway.

Project Description

The applicants contacted the Town’s arborist in March 2022 to request permission for tree removal. Upon inspection, it was determined the quantity of trees requested for removal exceeded staff authority. Per section 93.33 of the Town Code, this request must be reviewed and approved by the Board of Adjustment.

***§ 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 Tree Protection Ordinance provides the requirements for tree replacement as well. This includes both the quantity of trees to be replaced as well as the size/types of trees that are allowable for replacement.

***§ 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.

The applicants request this removal and have offered to replace with seventy-one (71) redbud trees. The specific tree species requested for removal, and their dbH, are included within the packet.

Request for Board of Adjustment

This tree removal request must be approved by the Board of Adjustment before proceeding.

# Request for Tree Removal

Request for the Town Administrator to Inspect Trees to Authorize Removal

**Name**

Chris Michell

**Address**

46 Hilltop Rd, Asheville, North Carolina 28803

**Phone**

(828) 708-2850

**Alt Phone**

**Email**

chrism@juddbuilders.net

**Alt Email**

johnjr@juddbuilders.net

**Description of Trees to be Inspected (please note type of tree(s), location of tree(s) and reason for removal)**

White Pines, Yellow Pines, Spruce Pines, Poplars, Hemlocks. Located around perimeter of house. Trees are being removed because house is having an addition added and reworking the driveway. There is also a lot of grading, landscaping, and reworking of retaining walls that need to be accounted for. I have a site map with marked trees for removal, a replacement tree schedule according to Biltmore Forest guidelines, a schedule for types of trees being used as replacements based on list provided by Biltmore Forest

**Are the trees to be inspected marked?**

Yes

**Please identify type of marker (tape, ribbon, etc)**

White & Green Tape

**Would you like to be present during the inspection?**

Yes

**Please note the best day & time to meet**

Monday - Thursday 8AM-4PM

**Estimated date of Removal (If Approved)**

May 30th





Sophora japonica	Pagodatreer	D	50'-75' high w/ similar spread	Upright spreading
Taxodium distichum	Baldcypress	D	50'-70' high w/ 20'-30' spread	Slender pyramidal
Tilia americana	American Linden	D	60'-80' high w/ 40'-60' spread	Ovate
Tilia cordata	Little Leaf Linden	D	50'-70' high w/ 30'-50' spread	Upright-oval to pyramidal-rounded
Tsuga canadensis	Canadian Hemlock	E	40'-70' high w/ 25'-35' spread	Pyramidal
Tsuga caroliniana	Carolina Hemlock	E	45'-60' high w/ 20'-25' spread	Pyramidal
Ulmus parviflora	Chinese Elm	D	40'-60' high w/ 40' spread	Rounded to oval
Zelcova serrata	Zelcova	D	50'-80' high w/ similar spread	Vase-shaped
<b>Small Trees</b>				
Acer campestre	Hedge Maple	D	25'-35' high w/ similar spread	Dense rounded
Acer ginnala	Amur Maple	D	15'-20' high w/ similar spread	Multi-stemmed. Rounded
Acer griseum	Paperbark Maple	D	20'-30' high w/ 15'-30' spread	Upright-oval, oval to rounded
Acer palmatum	Japanese Maple	D	15'-25' high w/ equal or greater spread	Rounded to broad-rounded
Acer spicatum	Mountain Maple	D	10'-30' high w/ equal spread	Rounded
Aesculus x carnea	Red Horsechestnut	D	30'-40' w/ similar spread	Round
Aesculus parvia	Red Buckeye	D	10'-20' high with similar spread	Multi-stemmed. Round
Amelanchier arborea	Serviceberry	D	15'-25' high w/ 15'-25' spread	Multi-stemmed. Rounded crown
Carpinus carolina	American Hornbeam	D	20'-35' high w/ similar spread	Multi or single-stemmed. Irregular crown
Cercis canadensis	Redbud	D	20'-30' high w/ 25'-35' spread	Spreading flat-topped to rounded crown
Chionanthus virginicus	Fringetree	D	15'-20' high w/ similar spread	Spreading open crown, often wider than tall
Cornus florida	Flowering Dogwood	D	10'-25' high w/ similar or greater spread	Flat topped crown with horizontal branching
Cornus kousa	Kousa Dogwood	D	20'-30' high w/ similar spread	Vase shaped when young. Horizontal spreading with age
Cotinus obovatus	Smoketree	D	10'-15' high w/ 10'-15' spread	Upright spreading. Can be multi-stemmed
Crataegus phaenopyrum	Washington Hawthorn	D	25'-30' high w/ 20'-25' spread	Broadly oval to dense rounded crown
Halesia carolina	Carolina Silverbell	D	30'-40' high w/ 20'-35' spread	Rounded crown, shrubby
Hamamelis virginiana	Common Witch-hazel	D	15'-20' high with similar spread	Irregular to rounded open crown
Ilex opaca	American Holly	E	15'-30' high w/ 10'-20' spread	Pyramidal in youth, can be irregular and open with age
Ilex x 'attenuata'	Foster Holly	E	20'-30' high w/ 10'-20' spread	Dense, narrow, conical
Ilex x 'conat'	Oak Leaf Holly	E	15'-20' high w/ 12'-15' spread	Upright pyramidal
Ilex x 'Nellie R Stevens'	Nellie Stevens Holly	E	15'-25'- tall w/ 10'-15' spread	Dense conical
Lagerstroemia indica	Common Crapemyrtle	D	10'-25' high w/ similar spread	Upright, multi-stemmed
Magnolia x soulangiana	Saucer Magnolia	D	20'-30' high w/ 25'-30' spread	Pyramidal to round
Magnolia stelleta	Star Magnolia	D	15'-20' high w/ 10'-15' spread	Upright
Magnolia virginiana	Sweetbay Magnolia	D	15'-40' high w/ 15x40' spread	Upright. Multi-stemmed
Malus spp.	Crabapple	D	15'-30' high w/ similar spread	Rounded to broad-rounded
Ostrya virginiana	Ironwood	D	25'-40' high w/ 15'-30' spread	Pyramidal to rounded
Oxydendrum arboreum	Sourwood	D	20'-30' high w/ 20' spread	Pyramidal
Prunus sargentii	Sargent Cherry	D	20'-35' high w/ similar spread	Dense broad-rounded crown
Syringa reticulata	Japanese Tree Lilac	D	20'-30' high w/ 15'-25' spread	Oval to rounded crown
Thuja occidentalis	American Arborvitae	E	40'+ high w/ 10'-15'- spread	Dense, conical to narrow-pyramidal
Tilia cordata	Little Leaf Linden	D	50'-70' high w/ 35'-50' spread	Pyramidal to ovate form
Viburnum prunifolium	Blackhaw Viburnum	D	12'-15' high w/ 8'-12' spread	Can be multi-stemmed. Round



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**BOARD OF ADJUSTMENT  
STAFF MEMORANDUM**

May 16, 2022



**Case 3 – 120 Stuyvesant Road  
Special Use Permit Request for Accessory Structures  
in Side Yard**

*Retaining Wall and Wrought-Iron Gate*

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Property Owner: Kirby and T.J. Finger  
Property Address: 120 Stuyvesant Road

Project Description

The applicants request a special use permit for accessory structures to be located within the side yard. The applicants previously received approval from the Town Arborist to remove nine (9) protected trees from the side yard. These trees are scheduled to be replaced per the attached landscape site plan, but that staff approval does not extend to the special use permit requests.

Special Use Permit Requests

Both the retaining wall and wrought-iron gate require special use permits in conjunction with Section 153.049 of the Town's Zoning Ordinance. This attached ordinance governs the installation of new walls and gates. The proposed retaining wall is four (4) feet tall and in compliance with setbacks. The proposed wrought-iron gate would provide access to the area created by the retaining wall.

The applicant intends to use forty (40) Leyland cypress trees to buffer the retaining wall and wrought-iron gate. These forty (40) trees as shown on the proposed site plan satisfy the replanting requirements from the Tree Protection Ordinance.

## § 153.049 FENCE, GATE AND WALL REGULATIONS.

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

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

(1) The fence, gate, or wall is constructed entirely within the rear yard, is not located in any side or rear yard setbacks, and is constructed of materials deemed acceptable in § 153.049(D).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(Ord. passed 2-11-2020; Ord. passed 6-8-2021)

# Zoning Compliance Application

Town of Biltmore Forest

**Name**

TJ & Kirby Finger

**Property Address**

120 Stuyvesant Rd

**Phone**

(828) 318-4550

**Email**

kirbyfinger@gmail.com

**Parcel ID/PIN Number**

964683765100000

## ZONING INFORMATION

**Current Zoning**

R-1

**Lot Size**

1.68

**Maximum Roof Coverage**

7,500 square feet (Up to 3 acres)

**Proposed Roof Coverage Total**

7500

**Maximum Impervious Surface Coverage**

1-3 acres (25 percent of lot area)

**Proposed Impervious Surface Coverage**

1-3

**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**

4 foot tall

**Description of the Proposed Project**

Creating privacy with approximately 40 10'-12' leyland cypresses around the property line on the front right side of house. Then adding a building block retaining wall with concrete baluster, concrete top to match the front of the existing house, and the front wall will have stucco. Next will be to add fill dirt to the side yard and retaining wall to have a flat side yard. Lastly, we will add plants, bushes and grass to side of the house.

**Estimated Start Date**

5/18/2022

**Estimated Completion Date**

8/1/2022

**Estimated Cost of Project**

\$50,000.00

**Supporting Documentation (Site Plan, Drawings, Other Information)**

**Applicant Signature**

**Date**

4/21/2022

T. J. Finger

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# Special Use Permit Application

Town of Biltmore Forest

**Name**

Thomas Finger Jr.

**Address**

120 Stuyvesant Rd

**Phone**

(828) 318-4550

**Email**

kirbyfinger@gmail.com

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

Accessory Structures

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

**Please provide a description of the proposed project:**

Creating privacy with approximately 40 10'-12' leyland cypresses around the property line on the front right side of house. Then adding a building block retaining wall with concrete baluster, concrete top to match the front of the existing house, and the front wall will have stucco. Next will be to add fill dirt to the side yard and retaining wall to have a flat side yard. Lastly, we will add plants, bushes and grass to side of the house.

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

The proposed project will enhance our property value and provide a clean landscaped area. It will also create privacy between three property lines. The proposed project is good for the neighborhood.

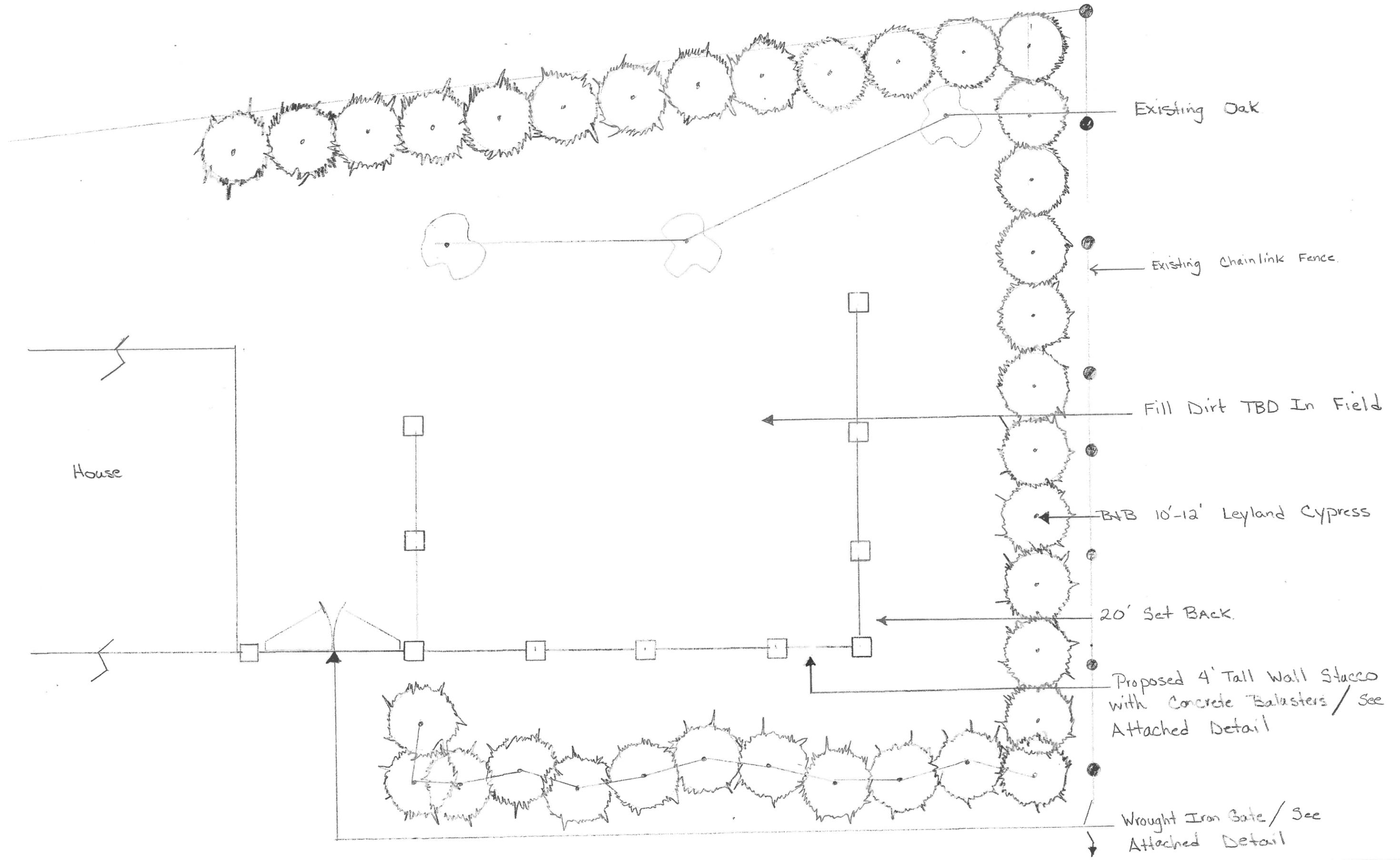
**I hereby certify that all of the information set forth above is true and accurate to the best of my knowledge.**

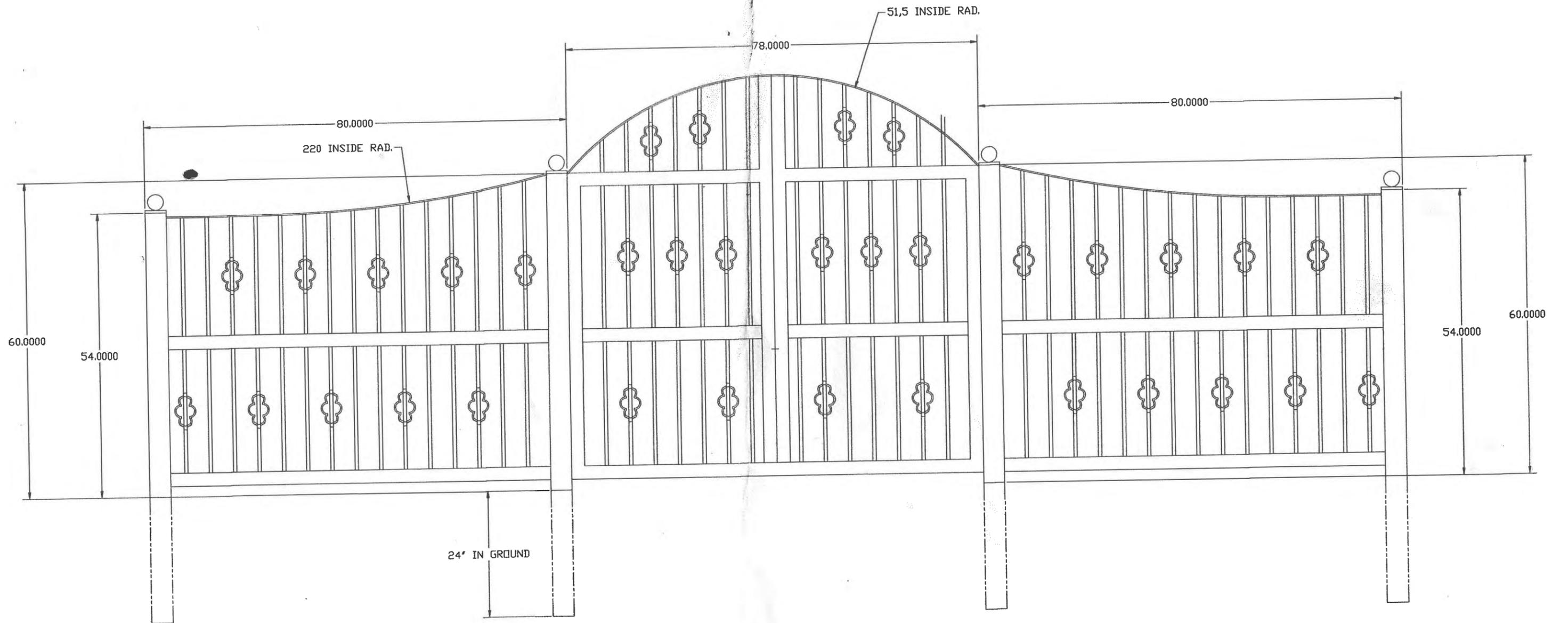
**Signature**



**Date**

4/21/2022





**BOARD OF ADJUSTMENT  
STAFF MEMORANDUM**

May 16, 2022



**Case 4 – 28 Forest Road  
Special Use Permit Request for Fence  
Installation in Side Yard**

**Variance Request for Installation within  
Side & Rear Yard Setback**

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Property Owner: Christine McGuire  
Property Address: 28 Forest Road

Project Description

The applicant requests a special use permit to install a five (5) foot tall black aluminum fence in each side yard. The proposed fence would connect to two (2) existing fences – one on the south side of the property and one on the east side of the property. The existing fences to which the proposed, new fence would connect are located within the side and rear yard setbacks, respectively.

In addition to the connection of fences, the applicant also requests a new fence portion to be constructed along the northern side of the property, and then tie back into the existing garage. This proposed location would also be within the side yard setback.

Special Use Permit Requests

The fence installation (and gates associated with access) require special use permits in conjunction with Section 153.049 of the Town's Zoning Ordinance. This attached ordinance governs the installation of new fences, walls, and gates. The proposed fence is five (5) feet tall and black aluminum. The proposal includes plans for buffering the fence and gates as shown on the attached landscaping plan. Please note: this landscaping plan DOES NOT show the fence location, but rather, the plans for planting on the property.

Variance Request

The variance request results from the connection to existing fences within the side yard and rear yard setbacks, as well as the installation of new fencing within the side yard setback. Accessory structures, including fences, are prohibited from the setbacks without variance approval from the Board of Adjustment.

## § 153.049 FENCE, GATE AND WALL REGULATIONS.

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

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

(1) The fence, gate, or wall is constructed entirely within the rear yard, is not located in any side or rear yard setbacks, and is constructed of materials deemed acceptable in § 153.049(D).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(Ord. passed 2-11-2020; Ord. passed 6-8-2021)

# Zoning Compliance Application

Town of Biltmore Forest

**Name**

Christine McGuire

**Property Address**

28 Forest Road

**Phone****Email****Parcel ID/PIN Number**

964770756300000

## ZONING INFORMATION

**Current Zoning**

R-1

**Lot Size**

0.74

**Maximum Roof Coverage**

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

**Proposed Roof Coverage Total**

N/A

**Maximum Impervious Surface Coverage**

Up to 1 acre (27.5 percent of lot area)

**Proposed Impervious Surface Coverage**

N/A

**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**

N/A

**Description of the Proposed Project**

Installation of 5 foot (maximum) black aluminum fence to connect to two existing fences on side and rear property lines. Additional fence installation along northern side yard to tie into back corner of garage.

**Estimated Start Date**

5/23/2022

**Estimated Completion Date**

8/22/2022

**Estimated Cost of Project**

\$10,000.00

**Supporting Documentation (Site Plan, Drawings, Other Information)**

# VARIANCE APPLICATION

Town of Biltmore Forest

**Name**

Christine McGuire

**Address**

28 Forest Road

**Phone**

**Email**

**Current Zoning/Use**

Residential

**Requested Use**

Residential

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

**What would you like to do with your property?**

Install fence within side and rear yard setbacks to connect to two existing fences on property lines. Install fence along other side yard setback to tie into existing garage.

**What does the ordinance require?**

No accessory structures within side or rear yard setbacks.

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.**

Existing fences are already located on the southern and eastern property lines (side and rear yard, respectively). Connecting to these fences is important from a maintenance perspective and being able to access the entire area, rather than maintaining a 20 or 25 foot segment between two fences as would be required by the Ordinance.

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

Yes, the existing fences were on the property line when the home was purchased. The fence on the rear property line was put in place by the Town of Biltmore Forest and is maintained by the Town through an agreement with a prior property owner.

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

The existing fences were in place when the house was purchased - therefore, the desire to connect to the existing fences only occurred as a result of those fences already being in place.

**The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that**

**public safety is secured, and substantial justice is achieved.**

This connection and the additional fence would allow the rear yard to be entirely fenced off and allow safe space for my dog. Additionally, my landscaping plan would buffer the entirety of the fence from the public road view.

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

**Signature**

**Date**

4/1/2022

A handwritten signature in black ink, consisting of a series of connected loops and curves, positioned above a horizontal line.

# Special Use Permit Application

Town of Biltmore Forest

**Name**

Christine McGuire

**Address**

28 Forest Road

**Phone**

**Email**

**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:**

Installation of five foot (maximum) black aluminum fence within side yard and rear yard. Fence would connect to existing fences on south side property line and east side rear property line. Fence would then continue west in side yard to connect and tie into existing garage.

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

Property is already fenced on two sides; this would allow ability for fencing rear yard and provide space for my dog to play without leaving the property.

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

**Signature**

**Date**

4/1/2022



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5724

70.4

29.6

100

24.29

73.6

50

50

200.3

7328

7791

2021

7563

30

60

45

30

43.54

0649

9289

60.8

(6)

134.5

289.3

New Proposed Fence

Existing Fence



**ANNUALS/PERENNIALS**

BT	BOTANICAL / COMMON NAME
1	ARALIA FLEXOSA 'LADY IN RED' / LADY IN RED LADY FERN
2	ATYRIUM HONOLULU 'REBEL RED' / REBEL RED JAPANESE PAINTED FERN
3	GERANIOTISMA PLUMBAGINACEA / DWARF PLUMBAGO
4	DELONPERIA COOPERI / PURPLE ICE PLANT
5	GALLUM ODOURATUM / SWEET WOODRUFF
6	HEPETA X PAARMEN NOVAREPARK TH / JUNIOR WALKER CATTAIL
7	IMPATIENS CANNABIFOLIA / CANNABON FERN
8	PAEDONIA X / HYBRID PEONY
9	ROSEMARIA OFFICINALIS 'ARP' / ARP ROSEMARY
10	MEDUN X 'ANGELINA' / ANGELINA SEDUM
11	MEDUN X 'AUTUMN JOY' / AUTUMN JOY SEDUM
12	BT
13	BOUVELOIA GRACIOSA 'BLONDE AMBITION' / BLONDE
14	WAKONEDOLIA MACRA 'ALL GOLD' / ALL GOLD JAPANESE MAPLE
15	BOUVELOIA GRACIOSA 'THE BLUE' / THE BLUE
16	BT
17	BT
18	HYDRANGEA PETIOLATA / CUMING HYDRANGEA
19	BT
20	BT
21	788 SF CAREX LAOCHALIS 'MOON' / BUNNY BLUE SP
22	10 SF CHIRYSOGONUM VIRIDICARPUM AUSTRALE / S
23	108 SF OPHIOPOGON PLANCHONIA 'VIGRESCENS'

**CONCEPT PLANT SCHEDULE**

CODE	PLANT NAME
1	BLACK WALNUT PLANTING MIX (687 SF)
2	ANEMONE X HYBRIDA 'HONORINE JOBERT'
3	ASARUM CANADENSE / CANADIAN WILD GINGER
4	ASTILBE X ARENDIS 'RHEINLAND'
5	EPHEDEUM X VERICOLOR 'SULPHUREUM'
6	HELLEBORUS X HYBRIDUS / HELLEBORE
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NEIGHBOR'S DRAINAGE SWALE

EX BLACK WALNUT  
(5) KOREANSPICE VIBURNUM

REMOVE (2) STUMPS FROM AREA

BLACK WALNUT PLANTING MIX (687 SF)  
ANEMONE X HYBRIDA 'HONORINE JOBERT'  
ASARUM CANADENSE / CANADIAN WILD GINGER  
ASTILBE X ARENDIS 'RHEINLAND'  
EPHEDEUM X VERICOLOR 'SULPHUREUM'  
HELLEBORUS X HYBRIDUS

(5) LADY IN RED LADY FERN

POSSIBLE REMOVAL OF EX TREE  
REMOVE WILLOW FROM AREA

(3) CINNAMON FERN

EXISTING NEIGHBOR'S HOLLY

EX HOLLY

(5) LADY IN RED LADY FERN

(5) LIMELIGHT PANICLE HYDRANGEA

(3) CINNAMON FERN

EX AMELANCHIER  
SCRUB BRUSH

(89 SF) GREEN AND GOLD  
GROUND COVER

RECOMMEND EXPANDING DRIVEWAY  
AS SHOWN

(1) FURT HEAVENLY BAMBOO

EXISTING DRAINILE

EX VIBURNUM  
CONFIRM VARIETY & MATCH NEW VIBURNUM

(2) VIBURNUM

(3) GINGER WINE NINEBARK

(5) BLONDE AMBITION BLUE GRAMA

(5) FURT HEAVENLY BAMBOO

(1) VERDON HINOKI FALSE CYPRESS

BRICK CURBING  
STYLE & COLOR TO MATCH HOUSE  
EXISTING NATURAL STONE PATH  
RESET AS NEEDED

EXISTING DRIVEWAY LINE

NEW CHIP AND SEAL DRIVEWAY  
(DASHED LINE IS EXISTING)

BRICK CURBING  
STYLE & COLOR TO MATCH HOUSE  
WALL DRAWN TO PROPERTY LINE

(1) GOLD MOUND SPIREA

EXISTING NEIGHBOR'S HOLLY

(2) HYBRID PEONY

DECORATIVE SCULPTURE/FEATURE BY OWNER  
(5) AUTUMN JOY SEDUM

(5) MILLENIUM ORNAMENTAL ONION

(1) BANGO-KAKU JAPANESE MAPLE

EX CYPRESS & MAGNOLIAS

(3) GREEN GIANT ARBORVITAE

EXISTING ACCESS GATE

EX MAGNOLIA

EX MAGNOLIA

EX HOLLY

RECOMMEND REMOVING TREE

EX AZALEA

REMOVE BURNING BUSH

TURF

BEDLINE OPTION A

BEDLINE OPTION B - FOR EXPANDED PLANTING  
CUT FLOWER MIX  
(SEE SCHEDULE FOR PLANT SELECTION)

(5) BLUE VELVET ST. JOHN'S WORT

(1) ANGEL FALLS WHITE PINE

(3) FLAMING SILVER JAPANESE PIERIS

(1) GINGER WINE NINEBARK

(3) COPPERTONE DISTYLUM

(5) CINNAMON FERN

(432 SF) GREEN AND GOLD  
EX TREES TO REMAIN IN AREA

(3) PINK TURTLEHEAD

(5) FANAL ASTILBE

(1) ALLEY CAT EASTERN REDBUD

(6) CHONODES RHODODENDRON

(1) ARP ROSEMARY

(1) DAINY DOLL HINOKI FALSE CYPRESS

(2) THE BLUES LITTLE BLUESTEM

(3) PURPLE ICE PLANT

(1) SLOWMOUND MUGO PINE

CONCRETE ENTRANCE

EX STONE, TIMBERS & PLANTS  
TO REMAIN IN AREA

(2) ANGELINA SEDUM

CRAWLSPACE ENTRANCE / LEAVE ACCESS

EX CEDAR

EX AZALEA

CRUSHED STONE

EX SKY PENCIL

RESIDENCE

NEW ROOFLINE

GUARD RAIL

NEW STEPS

NEW STONE TOP TO PATIO

EXISTING PATIO LINE TO REMAIN

(5) AUTUMN CHIFFON ENCORE AZALEA

(5) REGAL RED JAPANESE PAINTED FERN

EXISTING WALL TO BE REMOVED

(2) ALL GOLD JAPANESE FOREST GRASS  
DECORATIVE SCULPTURE/FEATURE BY OWNER

NEW ROOFLINE

(2) SWEET WOODRUFF

EXISTING WALL TO REMAIN  
UNTIL JOINT LINE

(1) TROLL DWARF MAIDENHAIR TREE

(2) DWARF PLUMBAGO

(1) CLIMBING HYDRANGEA

FILL IN PATIO TO MEET WALL

TRANSPLANTED AZALEA

(3) SKY PENCIL JAPANESE HOLLY

(108 SF) BLACK MONDO GRASS

BULB MIX TO BE PLANTED IN MONDO GRASS AREAS

TURF

FRUNGE & TRIM EXISTING AZALEAS  
REMOVE ALL DEBRIS & GENERAL  
CLEAN UP OF EXISTING MATERIAL

TRANSPLANT RHODODENDRON,  
PIERIS & NATIVE AZALEAS TO  
WOODLINE

MAILBOX

Dear Rabbit,  
Repeat other side.

Detail Fountain  
Pond Guy  
→ finish

1st full week  
in April  
→ 2 weeks

Nandina

BRICK CURBING  
STYLE & COLOR TO MATCH HOUSE  
WALL DRAWN TO PROPERTY LINE